

No. 13806

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United States  
Court of Appeals  
for the Ninth Circuit.

*Serial, 2793*

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

ROY EATON,

Respondent.

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

GENEVIEVE H. EATON,

Respondent.

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Transcript of Record

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Petitions to Review Decisions of the Tax Court  
of the United States

FILED

JUL 23 1953

PAUL P. O'BRIEN

CLERK



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Court of Appeals  
for the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
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Petitions to Review Decisions of the Tax Court  
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## APPEARANCES

For Petitioner:

MILTON CADES, ESQ.,  
URBAN E. WILD, ESQ.,  
J. RUSSELL CADES, ESQ.,  
F. C. LOWELL HEAD, ESQ.

For Respondent:

CHARLES W. NYQUIST, ESQ.



Docket No. 24081

ROY EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1949

- July 7—Petition received and filed. Taxpayer notified. Fee paid.
- July 7—Request for Circuit hearing in Honolulu, T. H., filed by taxpayer. 7/19/49, granted.
- July 7—Notice of appearance of Milton Cades, Urban E. Wild and J. Russell Cades, filed.
- July 8—Copy of petition served on General Counsel.

The Tax Court of the United States

- Aug. 23—Answer filed by General Counsel.
- Aug. 30—Copy of Answer served on Taxpayer, Honolulu, T. H.

1951

- Mar. 12—Hearing set June 13, 1951, Honolulu, T.H.
- May 22—Hearing changed to June 15, 1951, Honolulu, T. H.
- June 18—Hearing had before Judge Arundell on merits. Proceedings consolidated for hearing. Stipulation of facts with Exhibits 1 through 51 attached except #30 not used.

1951

Petitioner's Brief, August 17, 1951. Respondent's Brief, October 16, 1951. Petitioner's Reply, Nov. 30, 1951.

July 18—Transcript of Hearing 6/18/51, filed.

Aug. 16—Brief filed by taxpayer. Copy served.

Oct. 16—Reply Brief filed by General Counsel.

Oct. 22—Motion for extension to Jan. 29, 1952, to file reply brief, filed by taxpayer. 10/23/51 granted.

1952

Jan. 28—Reply brief filed by taxpayer. Copy served 1/29/52.

July 9—Memorandum Findings of Fact and Opinion rendered. Judge Arundell. Decision will be entered under Rule 50. Copy served.

Oct. 9—Respondent's computation for entry of decision filed.

Oct. 13—Hearing set November 19, 1952, at Washington, D. C., on Respondent's computation.

Oct. 30—Consent to Settlement, filed by taxpayer.

Oct. 31—Decision entered. Judge Arundell. Div. 7.

1953

Jan. 19—Petition for Review by U. S. Court of Appeals for the Ninth Circuit filed by General Counsel.

Feb. 6—Proof of Service on Counsel, filed.

Feb. 12—Motion for extension of time to 4/17/53 to transmit record, filed by General Counsel.

1953

- Feb. 13—Order extending time to 4/17/53 to prepare, transmit and deliver record, entered.
- Feb. 17—Entry of Appearance, F. C. Lowell Head, as counsel, filed.
- Feb. 17—Proof of Service on Taxpayer, filed.
- Apr. 2—Statement of Points filed by General Counsel, with proof of service thereon.
- Apr. 2—Statement Re Diminution of Record filed by General Counsel, with proof of service thereon.

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The Tax Court of the United States

Docket No. 24082

GENEVIEVE H. EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DOCKET ENTRIES

1949

- July 7—Petition received and filed. Taxpayer notified. Fee paid.
- July 7—Request for Circuit hearing in Honolulu, T.H., filed by Taxpayer. 7/19/49, granted.
- July 7—Notice of appearance of Milton Cades, Urban E. Wild & J. Russell Cades, filed. 7/8/49, served.

1949

July 8—Copy of Petition served on General Counsel.

Aug. 24—Answer filed by General Counsel.

Sept. 1—Copy of Answer served on Taxpayer, Honolulu, T. H.

1951

Mar. 12—Hearing set June 13, 1951, Honolulu, T.H.

May 22—Hearing changed to June 15, 1951, Honolulu, T. H.

June 18—Hearing had before Judge Arundell on merits. Proceedings consolidated for hearing. Stipulation of facts with Exhibits 1 through 51 attached except #30 not used. Petitioner's Brief, August 17, 1951. Respondent's Brief, October 16, 1951. Petitioner's Reply, Nov. 30, 1951.

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1952

Jan. 28—Reply Brief filed by taxpayer. Copy served 1/29/52.

July 9—Memorandum Findings of Fact and Opinion rendered. Judge Arundell. Decision will be entered under Rule 50. Copy served.

Oct. 9—Respondent's computation for entry of decision filed.



1952

- Oct. 13—Hearing set 11/19/52 at Washington, D. C., on Respondent's computation.  
Oct. 30—Consent to Settlement, filed by taxpayer.  
Oct. 31—Decision entered. Judge Arundell. Div. 7.

1953

- Jan. 19—Petition for Review by U. S. Court of Appeals for the Ninth Circuit filed by General Counsel.  
Feb. 6—Proof of Service on Counsel, filed.  
Feb. 12—Motion for extension of time to 4/17/53 to transmit record, filed by General Counsel.  
Feb. 13—Order extending time to 4/17/53 to prepare, transmit and deliver record, entered.  
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Feb. 17—Proof of Service on Taxpayer, filed.  
Apr. 2—Statement of Points filed by General Counsel, with proof of service thereon.  
Apr. 2—Statement Re Diminution of Record filed by General Counsel, with proof of service thereon.

The Tax Court of the United States

Docket No. 24081

ROY EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT:FC:LMJ-90D) dated April 28, 1949, and as a basis of his proceeding alleges as follows:

## I.

The petitioner is an individual whose mailing address is Route #1, Box 303, Fullerton, California. The returns here involved were filed with the Collector for the Honolulu Division.

## II.

The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to petitioner on April 28, 1949.

## III.

The taxes in controversy are income taxes for the years and in the amounts shown below. The deficiency asserted is \$50,798.30, the entire amount of which is in controversy:

Years	Deficiency
1943 .....	\$ 7,477.24
1944 .....	23,589.24
1945 .....	19,282.01
1946 .....	449.81
	<hr/>
	\$50,798.30

## IV.

The determination of tax set forth in said notice of deficiency is based on the following errors:

1. The Commissioner of Internal Revenue has erred in holding that Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated September 30, 1942, hereinafter referred to as "Trust No. 1," was not, during the period October 1, 1942, to February 28, 1943, a bona fide special partner for income tax purposes of Nehi Beverage Company of Hawaii, a special partnership organized and doing business under the laws of the Territory of Hawaii, and that Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, hereinafter referred to as "Trust No. 2," was not, during the period March 1, 1943, to December 10, 1946, a bona fide special partner for income tax purposes of said partnership;

2. The Commissioner of Internal Revenue has erred in holding that all of the income of said Trust No. 1 and of said Trust No. 2, during the calendar years 1943 to 1946, inclusive, is the income of petitioner for income and victory tax pur-

poses, subject, however, to an adjustment under the Hawaiian Community Property Law commencing as of June 1, 1945;

3. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income and victory tax net income for the taxable year ended December 31, 1943, by adding to the income reported by petitioner for said year from said Nehi Beverage Company of Hawaii, the sum of \$10,049.17, being the income received by Trust No. 1 from its interest in said partnership for said partnership's fiscal year ended February 28, 1943;

4. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income and victory tax net income for the taxable year ended December 31, 1943, by adding to the income reported by petitioner for said year from said Nehi Beverage Company of Hawaii, the sum of \$7,574.90, being the income received by Trust No. 2 from its interest in said partnership for said partnership's fiscal year ended June 30, 1943;

5. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1943, by adding to the net gain reported by petitioner for said year the sum of \$194.76, being the distributive share of the net capital gain of said partnership attributable to Trust No. 2 for said partnership's fiscal year ended June 30, 1943;

6. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$7,477.24, or of any part thereof, in the petitioner's income tax for the taxable year ended December 31, 1943;

7. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1944, by adding to the income reported by petitioner for said year from Nehi Beverage Company of Hawaii, the sum of \$22,916.42, being the income received by Trust No. 2 from its interest in said partnership for said partnership's fiscal year ended June 30, 1944;

8. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1944, by adding to the income reported by petitioner for said year the sum of \$750.00 received by Trust No. 1 as interest income during the calendar year 1944;

9. The Commissioner of Internal Revenue has erred in including in the determination of petitioner's income tax net income for the taxable year ended December 31, 1944, the sum of \$5,509.08, representing the excess of expenses over the income from the operation of a sampan for commercial fishing purposes by said Nehi Beverage Company of Hawaii during said partnership's fiscal year ended June 30, 1944, which said amount is reflected

in the tax return filed by said partnership for that period;

10. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$23,589.24, or of any part thereof, in the petitioner's income tax for the taxable year ended December 31, 1944;

11. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1945, by adding to the income reported by petitioner for said year from said Nehi Beverage Company of Hawaii, the sum of \$23,714.48 (less an adjustment of 1/24th thereof, being the amount allocable to Genevieve H. Eaton, wife of petitioner, based on the Hawaiian Community Property Law in effect as of June 1, 1945), being the income received by Trust No. 2 from its interest in said partnership for said partnership's fiscal year ended June 30, 1945;

12. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1945, by adding to the income reported by petitioner for said year, the sum of \$750.00 received by Trust No. 1 as interest income during the calendar year 1945;

13. The Commissioner of Internal Revenue has erred in including in the determination of petitioner's income tax net income for the taxable year

ended December 31, 1945, the sum of \$1,004.37, representing the excess of expenses over the income from the operation of a sampan for commercial fishing purposes by said Nehi Beverage Company of Hawaii during said partnership's fiscal year ended June 30, 1945 (less an adjustment of 1/24th thereof, being the amount allocable to Genevieve H. Eaton, wife of petitioner, based on the Hawaiian Community Property Law in effect as of June 1, 1945, and a further adjustment to eliminate the net capital gain reported on the return of petitioner for that year from the sale of the sampan by Nehi Beverage Company of Hawaii in the amount of \$261.33), which said amount is reflected in the tax return filed by said partnership for that period;

14. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$19,282.01, or of any part thereof, in the petitioner's income tax for the taxable year ended December 31, 1945;

15. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1946, by adding to the income reported by petitioner for said year from said Nehi Beverage Company of Hawaii, the sum of \$222.03, being one-half of the income received by Trust No. 2 from its interest in said partnership for said partnership's fiscal periods ended June 30, 1946 and December 10, 1946;

16. The Commissioner of Internal Revenue has

erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1946, by adding to the income reported by petitioner for said year, the sum of \$691.60, being one-half of the income received by Trust No. 1 from investments during the calendar year 1946;

17. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1946, by adding to the net gain reported by petitioner for said year, the sum of \$637.93, being one-half of the distributive share of the net capital gain of said Nehi Beverage Company of Hawaii attributable to Trust No. 2 for said partnership's fiscal periods ended June 30, 1946, and December 10, 1946;

18. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$449.81, or of any part thereof, in petitioner's income tax for the taxable year ended December 31, 1946.

#### V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

1. The petitioner, on September 30, 1942, settled a Trust, hereinafter referred to as "Trust No. 1," by a transfer to Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, of a sum of Fifteen Thousand Dollars (\$15,000.00) under the hereinafter mentioned terms of said Trust Agreement;



2. By the terms of said Trust Agreement, the Trustee was to contribute the said sum of Fifteen Thousand Dollars (\$15,000.00) to the capital of Nehi Beverage Company of Hawaii, a special partnership duly organized under the terms of a special partnership agreement dated September 30, 1942, for a thirty per cent (30%) interest therein, and to continue to be a special partner in such partnership; said contributed capital being the fair and reasonable value of said interest duly ascertained as of September 30, 1942;

3. By the terms of said Trust Agreement, all of the income was to be accumulated until the youngest of the children of the Settlor reached the age of twenty-five (25) years, with discretion in the Trustee to pay out of the net income of the Trust amounts necessary for the support, maintenance and education of the beneficiaries;

4. By the terms of said Trust Agreement, the petitioner, as Settlor, completely divested himself of all right, title or interest in the trust estate, both corpus and income;

5. By the terms of said Trust Agreement, the Trustee has no right or power, discretionary or otherwise, to make any distribution of income or principal, current or accumulated, in any manner whatsoever to or at the direction of the petitioner; such right of disposition being confined to the terms of the trust instrument and to be exercised where permissible under the terms of the Trust within the sole discretion of the Trustee;

6. The gross income of said Trust No. 1, for the taxable year 1943, included income from the partnership of Nehi Beverage Company of Hawaii in the amount of \$10,049.17, which income was reported by said Trust for the year 1943, the income and victory tax was computed thereon, and said tax was properly paid by the said Trust;

7. The gross income of the said Trust No. 1, for the taxable year 1944, included income from interest in the amount of \$750.00, which income was reported by said Trust for the year 1944, the net income for income tax purposes was computed thereon by the said Trust, and said tax was properly paid by the said Trust;

8. The gross income of the said Trust No. 1, for the taxable year 1945, included income from interest in the amount of \$750.00, which income was reported by said Trust for the year 1945, the net income for income tax purposes was computed thereon by the said trust, and said tax was properly paid by the said Trust;

9. The gross income of the said Trust No. 1, for the taxable year 1946, included investment income in the amount of \$1,383.20, which income was reported by said Trust for the year 1946, the net income for income tax purposes was computed thereon by said Trust, and said tax was properly paid by the said Trust;

10. The petitioner, on February 28, 1943, settled a Trust, hereinafter referred to as "Trust No. 2," by a transfer to said Bishop Trust Company, Lim-

ited, as Trustee, of a sum of Fifteen Thousand Dollars (\$15,000.00), under the hereinafter mentioned terms and conditions;

11. By the terms of said Trust Agreement, a thirty per cent (30%) capital interest in the partnership known as Nehi Beverage Company of Hawaii was to be acquired for Fifteen Thousand Dollars (\$15,000.00); said amount being the fair and reasonable value of said interest ascertained as of February 28, 1943;

12. The terms of said Trust Agreement were practically identical with the provisions of said Trust No. 1, except that the Trustee was required to accumulate all income until the youngest of the children of the Settlor reached the age of twenty-five (25) years, without any discretion to distribute any portion of the income or principal for the support, maintenance and education of the beneficiaries;

13. As of February 28, 1943, Trust No. 2 purchased from said Trust No. 1 its interest as a special partner in said Nehi Beverage Company of Hawaii, and continued to be a partner in the new special partnership with the same name organized as of that time.

14. The gross income of said Trust No. 2, for the taxable year 1943, included income from said partnership in the amount of \$7,574.90, and a net capital gain of the said partnership in the amount of \$194.76, all of which income was reported by said Trust No. 2 for the year 1943, the income tax and

victory tax of said Trust was computed thereon, and said tax was properly paid by said Trust;

15. The gross income of said Trust No. 2 for the taxable year 1944, included income from said partnership in the amount of \$22,916.42, which income was reported by said Trust No. 2 for the year 1944, the income tax of said Trust was computed thereon, and said tax was properly paid by said Trust;

16. The gross income of said Trust No. 2, for the taxable year 1945, included income from said partnership in the amount of \$23,714.38, which income was reported by said Trust No. 2 for the year 1945, the income tax of said Trust was computed thereon, and said tax was properly paid by said Trust;

17. The gross income of said Trust No. 2 for the taxable year 1946, included income from said partnership in the amount of \$446.06, and a net capital gain of said partnership in the amount of \$1,275.86, all of which income was reported by said Trust No. 2 for the year 1946, the income tax of said Trust was computed thereon, and said tax was properly paid by said Trust;

18. In 1943, Nehi Beverage Company of Hawaii purchased a sampan for the purpose of conducting what appeared to be a profitable side line business in commercial fishing, and for the additional purpose of retaining the services of a valued employee of the bottling business;

19. Because of the requirement of heavy repairs and maintenance, and the deterioration of the fish-

ing grounds by reason of gun practice and other activities of the military forces of the United States, Nehi Beverage Company of Hawaii suffered a net operating loss on the sampan in the amount of \$5,509.08 during its fiscal year ended June 30, 1944, which was claimed as a deduction by said Nehi Beverage Company of Hawaii in computing its income tax net income on its return for that fiscal year, which, in turn, was used in computing the net income of petitioner subject to tax for the year 1944;

20. A similar net operating loss on the sampan, in the amount of \$1,004.37, was incurred during said Partnership's fiscal year ended June 30, 1945, which was claimed as a deduction by said partnership in computing its income tax net income on its return for that fiscal year, which in turn, was used in computing the net income of petitioner subject to tax for the year 1945;

21. Said sampan was not used by the partnership or others for pleasure purposes during the period it was owned by said Nehi Beverage Company of Hawaii, but was used solely for commercial fishing purposes;

22. That Nehi Beverage Company of Hawaii, a special partnership organized and doing business under the laws of the Territory of Hawaii, composed of Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., general partners, and Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton dated September 30, 1942, special partner, elected to file

its tax returns on an accrual and fiscal year basis ending on the 28th day of February, and filed its first return on that basis for the fiscal year ending February 28, 1943;

23. That Nehi Beverage Company of Hawaii, a special partnership organized and doing business under the laws of the Territory of Hawaii, composed of Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., general partners, and Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, special partner, elected to file its tax returns on an accrual and fiscal year basis ending on the 30th day of June of each and every year, and filed its first return on that basis for the fiscal year ended June 30, 1943; that said partnership was dissolved and filed its final return for the fiscal period ending December 10, 1946.

Wherefore Petitioner Prays that this Court may hear the proceeding and determine that there is no deficiency due from the petitioner for the years 1943, 1944, 1945 and 1946.

/s/ ROY EATON,  
Petitioner.

MILTON CADES,  
URBAN E. WILD,  
J. RUSSELL CADES,  
400 Bishop Trust Building,  
Honolulu, T. H.,  
Counsel for Petitioner.

State of California,  
County of Orange—ss.

Roy Eaton, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein; that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ ROY EATON.

Subscribed and sworn to before me this 5th day of July, 1949.

[Seal] /s/ P. B. HESS,  
Notary Public in and for the County of Orange,  
State of California.

My Commission expires Nov. 14, 1949.

EXHIBIT "A"

Form 1230.

SN-IT-1.

IT:FC:LMJ—90D.

Apr. 28, 1949.

Mr. Roy Eaton,  
Route #1, Box 303,  
Fullerton, California.

Dear Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1943; December 31, 1944; December 31, 1945, and December 31, 1946, discloses a de-

iciency of \$50,798.30, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws; notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, P. O. Box 421, Honolulu 9, T. H., for the attention of IT:FC:LMJ. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner.

By /s/ H. A. PETERSON,  
Internal Revenue Agent  
in Charge.

Enclosures:

Statement,  
Form 1276,  
Form of Waiver.



## STATEMENT

Mr. Roy Eaton  
Route No. 1, Box 303,  
Fullerton, California

Year	Deficiency
1943 .....	\$ 7,477.24
1944 .....	23,589.24
1945 .....	19,282.01
1946 .....	449.81
Total .....	<u>\$50,798.30</u>

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated September 30, 1947, to your protest dated July 14, 1948; and to the statements made at the conference held on March 8, 1949.

A copy of this letter and statement has been mailed to your representative, Mr. Milton Cades, of Smith, Wild, Beebe and Cades, Post Office Box 224, Honolulu, T. H., in accordance with the authority contained in the power of attorney executed by you.

## Taxable Year Ended December 31, 1942

## Adjustments to Net Income

Net income as disclosed by return .....	\$64,034.88
Unallowable deductions and additional income .....	none
Net income adjusted .....	<u>\$64,034.88</u>

## Computation of Tax

Net income adjusted .....	\$64,034.88
Less: Personal exemption .....	\$ 1,200.00
Credit for dependents .....	1,050.00      2,250.00
Balance (Surtax net income) .....	<u>\$61,784.88</u>
Less: Earned income credit:	
10 per cent of 20 per cent of \$61,911.76.....	1,238.24
Balance subject to normal tax .....	<u>\$60,546.64</u>
Normal tax at 6% on \$60,546.64 .....	\$ 3,632.80
Surtax on \$61,784.88 .....	<u>31,071.57</u>
Income tax liability .....	<u>\$34,704.37</u>

## Taxable Year Ended December 31, 1943

## Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return .....	\$51,817.38	\$52,583.91
Unallowable deductions and additional income:		
(a) Partnership income .....	17,624.07	17,624.07
(b) Net long term capital gain .....	194.76	
(c) Mathematical error .....	30.00	
Total .....	<u>\$69,666.21</u>	<u>\$70,207.98</u>
Nontaxable income and additional deductions:		
(d) Contributions .....	243.34	
(e) Other deductions .....	125.00	125.00
Total .....	<u>\$ 368.34</u>	<u>\$ 125.00</u>
Net income adjusted .....	\$69,297.87	\$70,082.98

## Explanation of Adjustments

(a) Represents income of the partnership, Nehi Beverage Company of Hawaii, which is held to be taxable to you, and which was reported on fiduciary returns filed for Roy Eaton Trusts No. 1 and No. 2, as follows:

Roy Eaton Trust No. 1 .....	\$10,049.17
Roy Eaton Trust No. 2 .....	7,574.90

        Total .....

(b) Represents net capital gain of the partnership, Nehi Beverage Company of Hawaii, which was reported by Roy Eaton Trust No. 2 on a fiduciary return, and is held to be taxable to you. Net capital gains are not includible in victory tax net income.

(c) Represents an error in addition of the deductions on your 1943 return which should be \$2,944.44 instead of \$2,974.44. The difference of \$30.00 is adjusted here. No adjustment need be made for victory tax net income purposes.

(d) Represents contributions of the partnership, Nehi Beverage Company of Hawaii, which were reported on fiduciary returns filed for Roy Eaton Trusts No. 1 and No. 2, as follows:

Roy Eaton Trust No. 1 .....	\$176.67
Roy Eaton Trust No. 2 .....	66.67

        Total .....

\$243.34

Contributions are deductible on your return since the income from the partnership reported by the trusts is held to be taxable to you. Contributions are not deductible from victory tax net income.

(c) Represents trustee's expenses deducted by Roy Eaton Trusts No. 1. Since the income of the trusts is held to be taxable to you, the trustee's commissions are deductible on your return.

#### Computation of Alternative Tax

Net income adjusted .....	\$69,297.87	
Less: Net long-term capital gain .....	2,402.67	
		<hr/>
Ordinary net income .....	\$66,895.20	
Less: Personal exemption .....	\$1,200.00	
Credit for dependents .....	1,050.00	2,250.00
		<hr/>
Surtax net income .....	\$64,645.20	
Less: Earned income credit		
(10% of 20% of \$64,122.24) .....		1,282.44
		<hr/>
Balance subject to normal tax .....	\$63,362.76	
Normal tax at 6% on \$63,362.76 .....	\$ 3,801.77	
Surtax on \$64,645.20 .....		33,045.19
		<hr/>
Partial tax .....	\$36,846.96	
Plus: 50% of net capital gain of \$2,402.67 .....		1,201.34
		<hr/>
Alternative tax .....	\$38,048.30	

#### Computation of Income and Victory Tax

Income tax net income adjusted .....	\$69,297.87	
Less: Personal exemption .....	\$1,200.00	
Credit for dependents .....	1,050.00	2,250.00
		<hr/>
Surtax net income .....	\$67,047.87	
Less: Earned income credit		
(10% of 20% of \$64,122.24) .....		1,282.44
		<hr/>
Balance subject to normal tax .....	\$65,765.43	
		<hr/>
Normal tax at 6% on \$65,765.43 .....	\$ 3,945.93	
Surtax on \$67,047.87 .....		34,703.03
		<hr/>
Total income tax .....	\$38,648.96	

Balance of income tax (total income tax or alternative tax, whichever is smaller) .....		\$38,048.30
Victory tax net income .....	\$70,082.98	
Less: Specific exemption .....	624.00	
Income subject to victory tax .....	<u>\$69,458.98</u>	
Victory tax before credit (5% of \$69,458.98) .....	\$ 3,472.95	
Less: Victory tax credit — maximum ....	<u>1,300.00</u>	
Net victory tax .....		<u>\$ 2,172.95</u>
Net income tax and victory tax (1) .....		<u>\$40,221.25</u>
Income tax for 1942 (2) .....		<u>\$34,704.37</u>
Amount of item (1) or (2) whichever is larger .....		\$40,221.25
Forgiveness feature:		
(a) Amount of item (1) or (2) whichever is smaller .....	\$34,704.37	
(b) Amount forgiven — 75% of \$34,704.37 .....	<u>26,028.28</u>	
(c) Amount unforgiven .....		<u>8,676.09</u>
Correct income and victory tax liability .....		\$48,897.34
Income and victory tax liability disclosed by return, Account No. 351588 .....		41,720.10
Deficiency in income and victory tax .....		<u><u>\$ 7,477.24</u></u>

## Taxable Year Ended December 31, 1944

## Adjustments to Net Income

Net income as disclosed by return .....		\$64,348.79
Unallowable deductions and additional income:		
(a) Partnership income .....	\$28,425.50	
(b) Trust income .....	750.00	29,175.50
Total .....		<u><u>\$93,524.29</u></u>

## Nontaxable income and additional deductions:

(c) Contributions .....	\$ 308.33	
(d) Taxes .....	341.13	
(e) Trustee's commissions .....	505.00	\$ 1,154.46
		<hr/>
Net income adjusted .....		\$92,369.83

## Explanation of Adjustments

(a) Represents income of the partnership, Nehi Beverage Company of Hawaii, which is held to be taxable to you, consisting of the following items:

(1) Amount reported on fiduciary return filed for Roy Eaton Trust No. 2: .....	\$22,916.42
(2) Amount claimed on the partnership return as net sampan operating losses and disallowed as unallowable deduction .....	5,509.08
	<hr/>
Total .....	\$28,425.50

(b) Represents interest income reported on a fiduciary return by Roy Eaton Trust No. 1, which is held taxable to you.

(c) Represents contributions of the partnership, Nehi Beverage Company of Hawaii, which were deducted on fiduciary return filed for Roy Eaton Trust No. 2, and which are deductible on your return since the income from the partnership reported by the trust is held to be taxable to you.

(d) Represents taxes paid by the partnership, Nehi Beverage Company of Hawaii, in the amount of \$147.44, which were deducted on fiduciary return filed for Roy Eaton Trust No. 2; and taxes paid by Roy Eaton Trust No. 1 in the amount of \$193.69 and deducted on a fiduciary return filed for the trust. Since the income from the partnership reported by Trust No. 2 and the interest income reported by Trust No. 1 is held to be taxable to you, the above taxes are deductible on your return.

(e) Represents trustee's commissions deducted by Roy Eaton Trust No. 1 in the amount of \$90.00, and by Roy Eaton Trust No. 2 in the amount of \$415.00, on fiduciary returns. Since the income reported by the trusts on fiduciary returns is held to be taxable to you, the trustee's commissions above are deductible on your return.

## Computation of Tax

Net income adjusted .....	\$92,369.83	
Less: Surtax exemption .....	2,500.00	
		<hr/>
Surtax net income .....	\$89,869.83	
Surtax on \$89,869.83 .....		\$58,510.66
Net income adjusted .....	\$92,369.83	
Less: Normal tax exemption .....	500.00	
		<hr/>
Balance subject to normal tax .....	\$91,869.83	
Normal tax at 3% .....		2,756.09
		<hr/>
Correct income tax liability .....		\$61,266.75
Income tax liability disclosed by return, Account No. 300438 .....		37,677.51
		<hr/>
Deficiency in income tax .....		\$23,589.24

## Taxable Year Ended December 31, 1945

## Adjustments to Net Income

Net income as disclosed by return .....		\$69,741.95
Unallowable deductions and additional income:		
(a) Partnership income .....	\$23,688.80	
(b) Trust income .....	750.00	24,438.80
		<hr/>
Total .....		\$94,180.75
Nontaxable income and additional deductions:		
(c) Net capital gains .....	\$ 261.33	
(d) Contributions .....	366.67	
(e) Taxes .....	494.00	
(f) Trustee's commissions .....	500.00	1,622.00
		<hr/>
Net income adjusted .....		\$92,558.75

## Explanation of Adjustments

(a) Represents income of the partnership, Nehi Beverage Company of Hawaii, which is held to be taxable to you, consisting of the following items:

(1) Amount reported on fiduciary return filed for Roy Eaton Trust No. 2: .....\$23,714.38

(2) Amount claimed on the partnership return as sampan operating losses and disallowed as unallowable deduction ..... 1,004.37

Total .....\$24,718.75

(3) Less: Amount allocable to Mrs. Genevieve H. Eaton based on the Hawaii Community Property Law in effect as of June 1, 1945, with the partnership reporting on a fiscal year basis ending June 30, 1945: 1/2 of 1/12th, or 1/24th of \$24,718.75, or ..... 1,029.95

Adjustment as above .....\$23,688.80

(b) Represents interest income reported on a fiduciary return by Roy Eaton Trust No. 1, which is held to be taxable to you. This amount was received prior to the date on which the Hawaii Community Property Law went into effect.

(c) Represents the net capital gain reported on your return from the sale of the sampan by the partnership, Nehi Beverage Company of Hawaii. The total net capital gain from the sale of the sampan amounted to \$392.00 of which \$261.33 were allocated to you and \$130.67 to Roy Eaton Trust No. 2. The total gain is thus eliminated as offset against the sampan operating losses.

(d) Represents contributions of the partnership, Nehi Beverage Company of Hawaii, which were deducted on fiduciary return filed for Roy Eaton Trust No. 2, and which are deductible on your return since the income from the partnership reported by the trust is held taxable to you.

(e) Represents taxes paid by the partnership, Nehi Beverage Company of Hawaii, which were deducted on fiduciary return filed for Roy Eaton Trust No. 2, and which are deductible on your return since the income from the partnership reported by the trust is held to be taxable to you.

(f) Represents trustee's commissions deducted by Roy Eaton Trust No. 1 in the amount of \$175.00, and by Roy Eaton Trust No. 2 in the amount of \$325.00, on fiduciary returns. Since the income reported by the trusts on fiduciary returns is held to be taxable to you, the trustee's commission's above are deductible on your return.

## Computation of Alternative Tax

Net income adjusted .....	\$92,558.75	
Less: Net long-term capital gain .....	3,568.78	
		<hr/>
Ordinary net income .....	\$88,989.97	
Less: Surtax exemption .....	2,000.00	
		<hr/>
Surtax net income .....	\$86,989.97	
Surtax on \$86,989.97 .....		\$56,091.57
Ordinary net income .....	\$88,989.97	
Less: Normal tax exemption .....	500.00	
		<hr/>
Balance subject to normal tax .....	\$88,489.97	
Normal tax at 3% on \$88,489.97 .....		2,654.70
		<hr/>
Partial tax .....		\$58,746.27
Plus: 50% of net capital gain of \$3,568.78 .....		1,784.39
		<hr/>
Alternative tax .....		\$60,530.66
		<hr/>

## Computation of Tax

Net income adjusted .....	\$92,558.75	
Less: Surtax exemption .....	2,000.00	
		<hr/>
Surtax net income .....	\$90,558.75	
Surtax on \$90,558.75 .....		\$59,106.11
Net income adjusted .....	\$92,558.75	
Less: Normal tax exemption .....	500.00	
		<hr/>
Balance subject to normal tax .....	\$92,058.75	
Normal tax at 3% on \$92,058.75 .....		2,761.76
		<hr/>
Total income tax .....		\$61,867.87
		<hr/>
Correct income tax liability .....		\$60,530.66
Income tax liability disclosed by return, Account No. 300635 .....		41,248.65
		<hr/>
Deficiency in income tax .....		\$19,282.01



## Taxable Year Ended December 31, 1946

## Adjustments to Net Income

Net Income as disclosed by return .....		\$27,276.30
Unallowable deductions and additional income:		
(a) Partnership income .....	\$223.03	
(b) Net long-term capital gain .....	637.93	
(c) Trust income .....	691.60	1,552.56
		<hr/>
Total .....		\$28,828.86
Nontaxable income and additional deductions:		
(d) Contributions .....	\$184.84	
(e) Taxes .....	155.09	
(f) Trustee's commissions .....	281.64	621.57
		<hr/>
Net income adjusted .....		\$28,207.29

## Explanation of Adjustments

(a) Represents income of the partnership Nehi Beverage Company of Hawaii, which is held to be taxable to you, and which was reported on fiduciary return filed for Roy Eaton Trust No. 2. Of the total amount of \$446.06, one-half, or \$223.03, is allocable to Mrs. Genevieve H. Eaton under the Hawaii Community Property Law.

(b) Represents the portion of the net capital gains of the Nehi Beverage Company of Hawaii reported on a fiduciary return filed for Roy Eaton Trust No. 2 which is held to be taxable to you. Of the total amount of \$1,275.86, one-half, or \$637.93, is allocated to Mrs. Genevieve H. Eaton.

(c) Represents income reported on a fiduciary return by Roy Eaton Trust No. 1, which is held to be taxable to you. Of the total amount of \$1,383.20, one-half, or \$691.60, is allocated to Mrs. Genevieve H. Eaton.

(d) Represents contributions of the partnership, Nehi Beverage Company of Hawaii, which were deducted in the amount of \$258.29 on fiduciary return filed for Roy Eaton Trust No. 2, and which are deductible on your return since the income from the partnership reported by the trust is held to be taxable to you. The correct amount of allowable contributions, as shown on the partnership returns, is \$369.67, of which one-half, or \$184.83, is allocated to Mrs. Genevieve H. Eaton.

(e) Represents taxes paid by the partnership, Nehi Beverage Company of Hawaii, in the amount of \$308.47, which were deducted on fiduciary return filed for Roy Eaton Trust No. 2; and taxes paid by Roy Eaton Trust No. 1 in the amount of \$1.72 and deducted on a fiduciary return filed for the trust. Since the income from the partnership reported by Trust No. 2 and the income reported by Trust No. 1 is held to be taxable to you, the above taxes are deductible on your return. Of the total amount of \$310.19, one-half, or \$155.10, is allocated to Mrs. Genevieve H. Eaton.

(f) Represents trustee's commissions deducted by Roy Eaton Trust No. 1 in the amount of \$88.29, and by Roy Eaton Trust No. 2 in the amount of \$475.00, on fiduciary returns. Since the income reported by the trusts on fiduciary returns is held to be taxable to you, the trustee's commissions are deductible on your return. Of the total amount of \$563.29, one-half, or \$281.65, is allocated to Mrs. Genevieve H. Eaton.

#### Computation of Alternative Tax

Net income adjusted .....	\$28,207.29
Less: Net long-term capital gain .....	11,783.16
	<hr/>
Ordinary net income .....	\$16,424.13
Less: Exemptions .....	1,500.00
	<hr/>
Taxable income .....	\$14,924.13
	<hr/>
Combined tentative normal tax and surtax on \$14,924.13 .....	\$ 4,694.34
Less: 5% of \$4,694.34 .....	234.72
	<hr/>
Partial tax .....	\$ 4,459.62
Plus: 50% of net capital gain of \$11,783.16 .....	5,891.58
	<hr/>
Alternative tax .....	\$10,351.20

#### Computation of Tax

Net income adjusted .....	\$28,207.29
Less: Exemptions .....	1,500.00
	<hr/>
Taxable income .....	\$26,707.29
	<hr/>

Combined tentative normal tax and surtax on \$26,707.29 .....	\$11,178.52
Less: 5% of \$11,178.52 .....	558.93
	<hr/>
Combined normal tax and surtax .....	\$10,619.59
	<hr/>
Correct income tax liability .....	\$10,351.20
Income tax liability disclosed by return, Account No. 300298 .....	9,901.39
	<hr/>
Deficiency in income tax .....	\$ 449.81

Received and Filed July 7, 1949, T.C.U.S.

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[Title of Tax Court and Cause.]

Docket No. 24081

### ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

#### I. and II.

Admits the allegations contained in Paragraphs I and II of the petition.

#### III.

Admits the allegations contained in Paragraph III of the petition, except denies that the entire amount of the deficiency is in controversy.

## IV.

1 to 18, inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in Paragraph IV of the petition and Subparagraphs 1 to 18, inclusive, thereunder.

## V.

1. Admits that the petitioner, on September 30, 1942, settled a Trust, hereinafter referred to as "Trust No. 1," by a transfer to Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, of a sum of Fifteen Thousand Dollars (\$15,000.00); denies the remaining allegations contained in Subparagraph 1 of Paragraph V of the petition.

2. Admits that by the terms of said Trust Agreement, the Trustee was to contribute the said sum of Fifteen Thousand Dollars (\$15,000.00) to the capital of Nehi Beverage Company of Hawaii; denies the remaining allegations contained in Subparagraph 2 of Paragraph V of the petition.

3. Admits the allegations contained in Subparagraph 3 of Paragraph V of the petition.

4 and 5. Denies the allegations contained in Subparagraphs 4 and 5 of Paragraph V of the petition.

6. Admits that the gross income reported by Trust No. 1, for the taxable year 1943, included one item designated as income from the partnership of Nehi Beverage Company of Hawaii in the amount of \$10,049.17; denies the remaining allegations contained in Subparagraph 6 of Paragraph V of the petition.

7. Admits that the gross income reported by Trust No. 1, for the taxable year 1944, included an item designated interest in the amount of \$750.00; denies the remaining allegations contained in Subparagraph 7 of Paragraph V of the petition.

8. Admits that the gross income reported by Trust No. 1, for the taxable year 1945, included an item designated interest in the amount of \$750.00; denies the remaining allegations contained in Subparagraph 8 of Paragraph V of the petition.

9. Admits that the gross income reported by Trust No. 1, for the taxable year 1946, included an item designated as investment income in the amount of \$1,383.20; denies the remaining allegations contained in Subparagraph 9 of Paragraph V of the petition.

10. Admits that the petitioner, on February 28, 1943, settled a Trust, hereinafter referred to as "Trust No. 2," by a transfer to said Bishop Trust Company, Limited, as Trustee, of a sum of Fifteen Thousand Dollars (\$15,000.00); denies the remaining allegations contained in Subparagraph 10 of Paragraph V of the petition.

11. Admits that by the terms of said Trust Agreement, a thirty per cent (30%) capital interest in Nehi Beverage Company of Hawaii was to be acquired for Fifteen Thousand Dollars (\$15,000.00); denies the remaining allegations contained in Subparagraph 11 of Paragraph V of the petition.

12. Admits that under the terms of said Trust

Agreement the Trustee was required to accumulate all income until the youngest of the children of the Settlor reached the age of twenty-five (25) years, without any discretion to distribute any portion of the income or principal for the support, maintenance and education of the beneficiaries; denies the remaining allegations contained in Subparagraph 12 of Paragraph V of the petition.

13. Admits that as of February 28, 1943, Trust No. 2 purchased from said Trust No. 1 its interest as an alleged special partner in said Nehi Beverage Company of Hawaii; denies the remaining allegations contained in Subparagraph 13 of Paragraph V of the petition.

14. Admits that the gross income reported by Trust No. 2, for the taxable year 1943, included an item designated as income from said partnership in the amount of \$7,574.90, and a net capital gain of the said partnership in the amount of \$194.76; denies the remaining allegations contained in Subparagraph 14 of Paragraph V of the petition.

15. Admits that the gross income reported by Trust No. 2, for the taxable year 1944, included an item designated as income from said partnership in the amount of \$22,916.42; denies the remaining allegations contained in Subparagraph 15 of Paragraph V of the petition.

16. Admits that the gross income reported by Trust No. 2, for the taxable year 1945, included an item designated as income from said partnership

in the amount of \$23,714.38; denies the remaining allegations contained in Subparagraph 16 of Paragraph V of the petition.

17. Admits that the gross income reported by Trust No. 2, for the taxable year 1946, included an item designated as income from said partnership in the amount of \$446.06, and a net capital gain of said partnership in the amount of \$1,275.86; denies the remaining allegations contained in Subparagraph 17 of Paragraph V of the petition.

18. Admits that Nehi Beverage Company of Hawaii purchased a sampan; denies the remaining allegations contained in Subparagraph 18 of Paragraph V of the petition.

19. Admits that Nehi Beverage Company of Hawaii claimed a deduction of \$5,509.08 in computing its income tax net income on its return for the fiscal year ended June 30, 1944, which, in turn, was used in computing the net income of petitioner subject to tax for the year 1944; denies the remaining allegations contained in Subparagraph 19 of Paragraph V of the petition.

20. Admits that a similar deduction was claimed by said partnership in computing its income tax net income on its return for the fiscal year ended June 30, 1945, which, in turn, was used in computing the net income of petitioner subject to tax for the year 1945; denies the remaining allegations contained in Subparagraph 20 of Paragraph V of the petition.

21. Denies the allegations contained in Subparagraph 21 of Paragraph V of the petition.

22. Admits that Nehi Beverage Company of Hawaii filed its first return for the fiscal year ending February 28, 1943; denies the remaining allegations contained in Subparagraph 22 of Paragraph V of the petition.

23. Admits that Nehi Beverage Company of Hawaii filed a return for the fiscal year ended June 30, 1943, and filed its final return for the fiscal period ending December 10, 1946; denies the remaining allegations contained in Subparagraph 23 of Paragraph V of the petition.

#### VI.

Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;  
T. M. MATHER,  
LEONARD A. MARCUSSEN,  
Special Attorneys, Bureau of  
Internal Revenue.

Received and filed August 23, 1949, T.C.U.S.



The Tax Court of the United States

Docket No. 24082

GENEVIEVE H. EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT:FC:LMJ—90D) dated April 28, 1949, and as a basis of her proceeding alleges as follows:

I.

The petitioner is an individual whose mailing address is Route #1, Box 303, Fullerton, California. The returns here involved were filed with the Collector for the Honolulu Division.

II.

The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to petitioner on April 28, 1949.

III.

The taxes in controversy are income taxes for the years and in the amounts shown below. The deficiency asserted is \$830.90, the entire amount of which is in controversy.

Years	Deficiency
1945 .....	\$381.09
1946 .....	449.81
	\$830.90

#### IV.

The determination of tax set forth in said notice of deficiency is based on the following errors:

1. The Commissioner of Internal Revenue has erred in holding that Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, hereinafter referred to as "Trust No. 2," was not, during the period July 1, 1944, to December 10, 1946, a bona fide special partner for income tax purposes of Nehi Beverage Company of Hawaii, a special partnership organized and doing business under the laws of the Territory of Hawaii;

2. The Commissioner of Internal Revenue has erred in holding that all the income of Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated September 30, 1942, hereinafter referred to as "Trust No. 1," during the calendar year 1946, and all of the income of said Trust No. 2 during the calendar years 1945 and 1946, is the income of said Roy Eaton, husband of petitioner, for income tax purposes, and, from and after June 1, 1945, by virtue of the Hawaiian Community Property Law, one-half thereof is taxable to petitioner;

3. The Commissioner of Internal Revenue has

erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1945, by adding to the income reported by petitioner for said year from said Nehi Beverage Company of Hawaii, the sum of \$988.00 received by Trust No. 2 as income from its interest in said partnership for said partnership's fiscal year ended June 30, 1945, and allocable to petitioner based on the Hawaiian Community Property Law in effect as of June 1, 1945;

4. The Commissioner of Internal Revenue has erred in including in the determination of petitioner's income tax net income for the taxable year ended December 31, 1945, the sum of \$41.85, representing the portion allocable to petitioner based on the Hawaiian Community Property Law in effect as of June 1, 1945, of the excess of expenses over the income from the operation of a sampan for commercial fishing purposes by said Nehi Beverage Company of Hawaii during said partnership's fiscal year ended June 30, 1945, which said amount is reflected in the tax return filed by said partnership for that period;

5. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$381.09, or of any part thereof, in the petitioner's income tax for the taxable year ended December 31, 1945;

6. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended Decem-

ber 31, 1946, by adding to the income reported by petitioner for said year from said Nehi Beverage Company of Hawaii, the sum of \$222.03, being one-half of the income received by Trust No. 2 from its interest in said partnership for said partnership's fiscal periods ended June 30, 1946, and December 10, 1946;

7. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1946, by adding to the income reported by petitioner for said year, the sum of \$691.60, being one-half of the income received by Trust No. 1 from investments during the calendar year 1946;

8. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1946, by adding to the net gain reported by petitioner for said year, the sum of \$637.93, being one-half of the distributive share of the net capital gain of said Nehi Beverage Company of Hawaii, attributable to Trust No. 2 for said partnership's fiscal periods ended June 30, 1946, and December 10, 1946;

9. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$449.81, or of any part thereof, in petitioner's income tax for the taxable year ended December 31, 1946.

## V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

1. Roy Eaton, the husband of petitioner, on September 30, 1942, settled Trust No. 1, by a transfer to Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, of a sum of Fifteen Thousand Dollars (\$15,000.00) under the hereinafter-mentioned terms of said Trust Agreement;

2. By the terms of said Trust Agreement, the Trustee was to contribute the said sum of Fifteen Thousand Dollars (\$15,000.00) to the capital of Nehi Beverage Company of Hawaii, a special partnership duly organized under the terms of a special partnership agreement dated September 30, 1942, for a thirty per cent (30%) interest therein, and to continue to be a special partner in such partnership; said contributed capital being the fair and reasonable value of said interest duly ascertained as of September 30, 1942;

3. By the terms of said Trust Agreement, all the income was to be accumulated until the youngest of the children of the Settlor reached the age of twenty-five (25) years, with discretion in the Trustee to pay out of the net income of the Trust amounts necessary for the support, maintenance and education of the beneficiaries;

4. By the terms of said Trust Agreement, the said Roy Eaton, as Settlor, completely divested

himself of all right, title or interest in the trust estate, both corpus and income;

5. By the terms of said Trust Agreement, the Trustee has no right or power, discretionary or otherwise, to make any distribution of income or principal, current or accumulated, in any manner whatsoever to or at the direction of said Roy Eaton; such right of disposition being confined to the terms of the trust instrument and to be exercised where permissible under the terms of the Trust within the sole discretion of the Trustee;

6. The gross income of the said Trust No. 1, for the taxable year 1946, included investment income in the amount of \$1,383.20, which income was reported by said Trust for the year 1946, the net income for income tax purposes was computed thereon by said Trust, and said tax was properly paid by the said Trust;

7. The said Roy Eaton, on February 28, 1943, settled Trust No. 2 by a transfer to said Bishop Trust Company, Limited, as Trustee, of a sum of Fifteen Thousand Dollars (\$15,000.00) under the hereinafter-mentioned terms and conditions;

8. By the terms of said Trust Agreement, a thirty per cent (30%) capital interest in the partnership known as Nehi Beverage Company of Hawaii was to be acquired for Fifteen Thousand Dollars (\$15,000.00); said amount being the fair and reasonable value of said interest ascertained as of February 28, 1943;

9. The terms of said Trust Agreement were practically identical with the provisions of said Trust No. 1, except that the Trustee was required to accumulate all income until the youngest of the children of the Settlor reached the age of twenty-five (25) years, without any discretion to distribute any portion of the income or principal for the support, maintenance and education of the beneficiaries;

10. As of February 28, 1943, Trust No. 2 purchased from Trust No. 1 its interest as a special partner in said Nehi Beverage Company of Hawaii, and continued to be a partner in the new special partnership with the same name organized as of that time;

11. The gross income of said Trust No. 2, for the taxable year 1945, included income from said partnership in the amount of \$23,714.38, which income was reported by said Trust No. 2 for the year 1945, the income tax of said Trust was computed thereon and said tax was properly paid by said Trust;

12. The gross income of said Trust No. 2, for the taxable year 1946, included income from said partnership, in the amount of \$446.06, and a net capital gain of said partnership in the amount of \$1,275.86, all of which income was reported by said Trust No. 2 for the year 1946, the income tax of said Trust was computed thereon, and said tax was properly paid by said Trust;

13. In 1943, Nehi Beverage Company of Hawaii purchased a sampan for the purpose of conducting what appeared to be a profitable sideline business in commercial fishing, and for the additional purpose of retaining the services of a valued employee of the bottling business;

14. Because of the requirement of heavy repairs and maintenance, and the deterioration of the fishing grounds by reason of gun practice and other activities of the military forces of the United States, Nehi Beverage Company of Hawaii suffered a net operating loss on the sampan in the amount of \$1,004.37 during its fiscal year ended June 30, 1945, which was claimed as a deduction by Nehi Beverage Company of Hawaii in computing its income tax net income on its return for that fiscal year, which, in turn, was used in computing the net income of petitioner subject to tax for the year 1945;

15. Said sampan was not used by the partnership or others for pleasure purposes during the period it was owned by said Nehi Beverage Company of Hawaii, but was used solely for commercial fishing purposes;

16. That Nehi Beverage Company of Hawaii, a special partnership organized and doing business under the laws of the Territory of Hawaii, composed of Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., general partners, and Bishop Trust Company, Limited, a Hawaiian corporation,



Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, special partner, elected to file its tax returns on an accrual and fiscal year basis ending on the 30th day of June of each and every year, and filed its first return on that basis for the fiscal year ended June 30, 1943; that said partnership was dissolved and filed its final return for the fiscal period ending December 10, 1946.

Wherefore Petitioner Prays that this Court may hear the proceeding and determine that there is no deficiency due from the petitioner for the years 1945 and 1946.

/s/ GENEVIEVE H. EATON,  
Petitioner.

MILTON CADES,

URBAN E. WILD,

J. RUSSELL CADES,

Counsel for Petitioner.

State of California,  
County of Orange—ss.

Genevieve H. Eaton, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein; that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ GENEVIEVE H. EATON.

Subscribed and sworn to before me this 5th day of July, 1949.

[Seal] /s/ P. B. HESS,  
Notary Public in and for the County of Orange,  
State of California.

My Commission expires Nov. 14, 1949.

EXHIBIT "A"

Form 1230.

SN-IT-1.

IT:FC:LMJ—90D.

Apr. 28, 1949.

Mrs. Genevieve H. Eaton,  
Route #1, Box 303,  
Fullerton, California.

Dear Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1945, and December 31, 1946, discloses a deficiency of \$830.90, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, P. O. Box 421, Honolulu 9, T. H., for the attention of IT:FC:LMJ. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner.

By /s/ H. A. PETERSON,  
Internal Revenue Agent in  
Charge.

Enclosures:

Statement,  
Form 1276,  
Form of Waiver.

Statement

Mrs. Genevieve H. Eaton  
Route #1, Box 303  
Fullerton, California

Year	Deficiency
1945 .....	\$381.09
1946 .....	449.81
Total .....	<u>\$830.90</u>

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated September 25, 1947, to your protest dated July 14, 1948; and to the statements made at the conference held on March 8, 1949.

A copy of this letter and statement has been mailed to your representative, Mr. Milton Cades, of Smith, Wild, Beebe and Cades, Post Office Box 224, Honolulu, T. H., in accordance with the authority contained in the power of attorney executed by you.

#### Taxable Year Ended December 31, 1945

##### Adjustments to Net Income

Net income as disclosed by return .....	\$8,837.22
Unallowable deductions and additional income:	
(a) Community income .....	1,029.95
	<hr/>
Net income adjusted .....	\$9,867.17

##### Explanation of Adjustments

(a) Represents your share of additional income of \$24,718.75 from the partnership, Nehi Beverage Company of Hawaii, taxable to Mr. Roy Eaton. The amount allocable to you is based on the Hawaii Community Property Law in effect as of June 1, 1945, with the partnership reporting on a fiscal year basis ending June 30, 1945:  $\frac{1}{2}$  of  $\frac{1}{12}$ th, or  $\frac{1}{24}$ th of \$24,718.75, or \$1,029.95.

##### Computation of Tax

Net income adjusted .....	\$9,867.17
Less: Surtax exemption .....	500.00
	<hr/>
Surtax net income .....	\$9,367.17
Surtax on \$9,367.17 .....	\$2,424.84
Net income adjusted .....	\$9,867.17
Less: Normal tax exemption .....	500.00
	<hr/>
Balance subject to normal tax .....	\$9,367.17
Normal tax at 3% on \$9,367.17 .....	281.02
	<hr/>
Correct income tax liability .....	\$2,705.86
Income tax liability disclosed by return, Account No. 300639 .....	2,324.77
	<hr/>
Deficiency in income tax .....	\$ 381.09
	<hr/> <hr/>

## Taxable Year Ended December 31, 1946

## Adjustments to Net Income

Net income as disclosed by return .....	\$27,276.30
Unallowable deductions and additional income:	
(a) Community income .....	1,552.56
Total .....	\$28,828.86
Nontaxable income and additional deductions:	
(b) Community deductions .....	621.58
Net income adjusted .....	\$28,207.28

## Explanation of Adjustments

(a) Represents one-half of additional income taxable to Mr. Roy Eaton, as follows:

(1) Additional income from the partnership, Nehi Beverage Company of Hawaii, amounting to \$446.06: one-half thereof .....	\$ 223.03
(2) Additional net capital gains from the partnership, Nehi Beverage Company of Hawaii, amounting to \$1,275.86: one-half thereof .....	637.93
(3) Additional income from Roy Eaton Trust #1, amounting to \$1,383.20: one-half thereof .....	691.60
Total .....	\$1,552.56

(b) Represents one-half of additional deductions deductible by Mr. Roy Eaton, as follows:

(1) Additional contributions from the partnership, Nehi Beverage Company of Hawaii, amounting to \$369.67: one-half thereof .....	\$ 184.83
(2) Additional taxes paid by the partnership, Nehi Beverage Company of Hawaii, and by Roy Eaton Trust #1, amounting to \$310.19: one-half thereof .....	155.10
(3) Trustee's commissions paid by Roy Eaton Trust #1 and #2, amounting to \$563.29: one-half thereof .....	281.65
Total .....	\$ 621.58

Community income and community deductions are allocated to you under the provisions of the Hawaii Community Property Law.

Computation of Alternative Tax

Net income adjusted .....	\$28,207.28
Less: Net long term capital gain .....	11,783.16
	<hr/>
Ordinary net income .....	\$16,424.12
Less: Exemptions .....	1,000.00
	<hr/>
Taxable income .....	\$15,424.12
	<hr/>
Combined tentative normal tax and surtax on \$15,424.12 .....	\$ 4,929.34
Less: 5% of \$4,929.34 .....	246.47
	<hr/>
Partial tax .....	\$ 4,682.87
Plus: 50% of net capital gain of \$11,783.16 .....	5,891.58
	<hr/>
Alternative tax .....	\$10,574.45
	<hr/>

Computation of Tax

Net income adjusted .....	\$28,207.28
Less: Exemptions .....	1,000.00
	<hr/>
Taxable income .....	\$27,207.28
	<hr/>
Combined tentative normal tax and surtax on \$27,207.28 .....	\$11,488.51
Less: 5% of \$11,488.51 .....	574.43
	<hr/>
Combined normal tax and surtax .....	\$10,914.08
	<hr/>
Correct income tax liability .....	\$10,574.45
Income tax liability disclosed by return, Account No. 300297 .....	10,124.64
	<hr/>
Deficiency in income tax .....	\$ 449.81
	<hr/> <hr/>

Received and Filed July 7, 1949, T.C.U.S.

[Title of Tax Court and Cause.]

Docket No. 24082

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

I. and II.

Admits the allegations contained in Paragraphs I and II of the petition.

III.

Admits the allegations contained in Paragraph III of the petition, except denies that the entire amount of the deficiencies is in controversy.

IV.

1 to 9, inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in Paragraph IV of the petition and Subparagraphs 1 to 9, inclusive, thereunder.

V.

1. Admits that Roy Eaton, the husband of petitioner, on September 30, 1942, settled Trust No. 1, by a transfer to Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, of a sum of Fifteen Thousand

Dollars (\$15,000.00); denies the remaining allegations contained in Subparagraph 1 of Paragraph V of the petition.

2. Admits that by the terms of said Trust Agreement, the Trustee was to contribute the said sum of Fifteen Thousand Dollars (\$15,000.00) to the capital of Nehi Beverage Company of Hawaii; denies the remaining allegations contained in Subparagraph 2 of Paragraph V of the petition.

3. Admits the allegations contained in Subparagraph 3 of Paragraph V of the petition.

4 and 5. Denies the allegations contained in Subparagraphs 4 and 5 of Paragraph V of the petition.

6. Admits that the gross income reported by Trust No. 1, for the taxable year 1946, included an item designated investment income in the amount of \$1,383.20; denies the remaining allegations contained in Subparagraph 6 of Paragraph V of the petition.

7. Admits that the said Roy Eaton, on February 28, 1943, settled Trust No. 2 by a transfer to said Bishop Trust Company, Limited, as Trustee, of a sum of Fifteen Thousand Dollars (\$15,000.00); denies the remaining allegations contained in Subparagraph 7 of Paragraph V of the petition.

8. Admits that by the terms of said Trust Agreement, a thirty per cent (30%) capital interest in



Nehi Beverage Company of Hawaii was to be acquired for Fifteen Thousand Dollars (\$15,000.00); denies the remaining allegations contained in Subparagraph 8 of Paragraph V of the petition.

9. Admits that under the terms of said Trust Agreement the Trustee was required to accumulate all income until the youngest of the children of the Settlor reached the aged of twenty-five (25) years, without any discretion to distribute any portion of the income or principal for the support, maintenance and education of the beneficiaries; denies the remaining allegations contained in Subparagraph 9 of Paragraph V of the petition.

10. Admits that as of February 28, 1943, Trust No. 2 purchased from Trust No. 1 its interest as an alleged special partner in said Nehi Beverage Company of Hawaii; denies the remaining allegations contained in Subparagraph 10 of Paragraph V of the petition.

11. Admits that the gross income reported by Trust No. 2, for the taxable year 1945, included an item designated as income from said partnership in the amount of \$23,714.38; denies the remaining allegations contained in Subparagraph 11 of Paragraph V of the petition.

12. Admits that the gross income reported by Trust No. 2, for the taxable year 1946, included an item designated as income from said partnership in the amount of \$446.06, and a net capital gain of said partnership in the amount of \$1,275.86; denies

the remaining allegations contained in Subparagraph 12 of Paragraph V of the petition.

13. Admits that Nehi Beverage Company of Hawaii purchased a sampan; denies the remaining allegations contained in Subparagraph 13 of Paragraph V of the petition.

14. Admits that Nehi Beverage Company of Hawaii claimed a deduction of \$1,004.37 in computing its income tax net income on its return for the fiscal year ended June 30, 1945, which, in turn, was used in computing the net income of petitioner subject to tax for the year 1945; denies the remaining allegations contained in Subparagraph 14 of Paragraph V of the petition.

15. Denies the allegations contained in Subparagraph 15 of Paragraph V of the petition.

16. Admits that Nehi Beverage Company of Hawaii filed a return for the fiscal year ended June 30, 1943, and filed its final return for the fiscal period ending December 10, 1946; denies the remaining allegations contained in Subparagraph 16 of Paragraph V of the petition.

## VI.

Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's

determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;  
T. M. MATHER,  
LEONARD A. MARCUSSEN,  
Special Attorneys, Bureau of  
Internal Revenue.

Received and filed August 24, 1949, T.C.U.S.

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The Tax Court of the United States

Docket No. 24081

ROY EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 24082

GENEVIEVE EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed, by and between the parties hereto, by their respective attor-

neys, that the following facts shall be taken as true and may be received by the Court in evidence with the same force and effect as if the facts herein contained were testified to by competent witnesses; Provided, However, that this stipulation shall be without prejudice to the right of either party to introduce other or further evidence not inconsistent with the facts herein stipulated as true:

### I.

That petitioners Roy Eaton and Genevieve Eaton are, and were at all times material to this proceeding, husband and wife and residents of the Territory of Hawaii or Fullerton, California.

### II.

That petitioners have three children, Ann Eaton Weaver (Mrs. Neal F. Weaver), born April 17, 1930; Peter Eaton, born February 20, 1932, and Timothy Eaton, born August 28, 1934.

### III.

That petitioner Roy Eaton, in May, June and July, 1942, had correspondence by mail with Nehi Corporation with respect to franchises he held for Nehi, Par-T-Pak and Royal Crown Cola for the Territory of Hawaii. True copies of letters from petitioner Roy Eaton to Nehi Corporation dated May 21, 1942; from Nehi Corporation to petitioner Roy Eaton dated June 3, 1942; from petitioner Roy Eaton to Nehi Corporation dated July 7, 1942, and from Nehi Corporation to petitioner Roy Eaton

dated July 14, 1942, marked Exhibits 1, 2, 3 and 4, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### IV.

That petitioner Roy Eaton, on September 30, 1942, settled a trust, hereinafter referred to as "Trust No. 1," by a transfer to Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, of the sum of \$15,000.00, in conformity with that certain Indenture dated the 30th day of September, 1942, a true copy of which, marked Exhibit 5, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### V.

That a Special Partnership Agreement, dated the 30th day of September, 1942, was duly executed by Roy Eaton, Charles P. Johnson and Walter L. Prock, Jr., and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated September 30, 1942. A true copy of said Special Partnership Agreement, marked Exhibit 6, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### VI.

That a Bill of Sale, dated as of the close of business on September 30, 1942, was duly executed by Roy Eaton, as Seller, and Nehi Beverage Company of Hawaii, a Special Partnership. A true

copy of said Bill of Sale, marked Exhibit 7, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### VII.

That on November 2, 1942, a duly executed Certificate of Special Partnership, together with Affidavits of Roy Eaton, Charles P. Johnson, Walter L. Prock, Jr., and W. A. White, required by Section 6875, Revised Laws of Hawaii, 1935, were duly filed in the Office of the Treasurer of the Territory of Hawaii in accordance with the provisions of Chapter 225, Revised Laws of Hawaii, 1935. A true copy of said Certificate and Affidavits, marked Exhibit 8, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### VIII.

That a Statement of the Substance of Certificate of Special Partnership was duly published in The Honolulu Advertiser on November 9, 10, 16 and 17, 1942.

#### IX.

That petitioner, on February 28, 1943, settled a trust, hereinafter referred to as "Trust No. 2," by a transfer to said Bishop Trust Company, Limited, of a sum of \$15,000.00, in conformity with that certain Indenture dated the 28th day of February, 1943, a true copy of which, marked Exhibit 9, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## X.

That on February 28, 1943, Trust No. 2 purchased from Trust No. 1 all of its right, title and interest in and to its 30% capital interest in the Special Partnership known as "Nehi Beverage Company of Hawaii," which was duly assigned to said Trust No. 2 by Assignment dated the 28th day of February, 1943. A true copy of said Assignment, marked Exhibit 10, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XI.

That Trust No. 1 loaned the sum of \$15,000.00 to Nehi Beverage Company of Hawaii on February 28, 1943, receiving a note due one year after demand therefor with interest at 5% per annum. Interest was paid periodically and said note was repaid in full on November 23, 1946.

## XII.

That an Amendment of Special Partnership Agreement, dated the 28th day of February, 1943, was duly executed by Roy Eaton, Charles P. Johnson and Walter L. Prock, Jr., and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943. A true copy of said Amendment of Special Partnership Agreement, marked Exhibit 11, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XIII.

That on April 26, 1943, a duly executed Certifi-

cate of Change of Special Partnership and Affidavits of Roy Eaton, Charles P. Johnson, Walter L. Prock, Jr., and W. A. White, required by Section 6875, Revised Laws of Hawaii, 1935, were duly filed in the Office of the Treasurer of the Territory of Hawaii in accordance with the provisions of Chapter 225, Revised Laws of Hawaii, 1935. A true copy of said Certificate and Affidavits, marked Exhibit 12, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### XIV.

That a Statement of Substance of Certificate of Change of Special Partnership was duly published in The Honolulu Advertiser on May 3, 4, 10 and 11, 1943.

#### XV.

That on June 30, 1946, petitioner Roy Eaton purchased from Charles P. Johnson and Walter L. Prock, Jr., all of their interest in Nehi Beverage Company of Hawaii, and a Bill of Sale, dated as of the close of business on June 30, 1946, was duly executed by Charles P. Johnson and Walter L. Prock, Jr., as Sellers, and Roy Eaton, as Purchaser. A true copy of said Bill of Sale, marked Exhibit 13, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### XVI.

That on September 12, 1946, a Certificate of Change of Special Partnership was duly filed in the Office of the Treasurer of the Territory of Hawaii



in accordance with the provisions of Chapter 225, Revised Laws of Hawaii, 1935. A true copy of said Certificate, marked Exhibit 14, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### XVII.

That a Statement of Substance of Certificate of Change of Special Partnership was duly published in *The Honolulu Advertiser* on September 16, 19, 23 and 26, 1946.

#### XVIII.

That Nehi Beverage Company of Hawaii sold all of its assets and property to Nehi Beverage Company of Hawaii, Limited, as of the opening of business on October 1, 1946. A true copy of the confirmation letter of agreement, dated October 11, 1946, signed by the parties thereto, marked Exhibit 15; a true copy of Bill of Sale duly executed by the parties thereto, marked Exhibit 16; a true copy of Assignment of Lease duly executed by the parties thereto, marked Exhibit 17; true copies of duly executed notes of Nehi Beverage Company of Hawaii, Limited, to Roy Eaton, in the amounts of \$91,000.00 and \$24,500.00, and to Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, Settlor, in the amounts of \$39,000.00 and \$10,500.00, marked Exhibits 18, 19, 20 and 21, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XIX.

That on December 10, 1946, Cancellation of Certificate of Special Partnership of Nehi Beverage Company of Hawaii was duly filed in the Office of the Treasurer of the Territory of Hawaii in accordance with the provisions of Chapter 225, Revised Laws of Hawaii, 1935. A true copy of said Cancellation, marked Exhibit 22, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XX.

That a Notice of Dissolution of Special Partnership was duly published in the Honolulu Star-Bulletin on December 16, 23 and 30, 1946, and January 6, 1947.

## XXI.

That Nehi Beverage Company of Hawaii duly elected to file its partnership tax returns on an accrual and fiscal year basis ending on the 28th of February, and filed its first return on that basis for the fiscal year ended February 28, 1943. A photostatic copy of said return, marked Exhibit 23, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XXII.

That after the withdrawal of Trust No. 1 and the admission of Trust No. 2, Nehi Beverage Company of Hawaii elected to file its partnership tax returns on an accrual and fiscal year basis ending on the 30th day of June, and filed its first return on that

basis for the fiscal year ended June 30, 1943. After dissolution of the Special Partnership, Nehi Beverage Company of Hawaii filed its final return for the fiscal year ended December 10, 1946. Photostatic copies of the returns filed by Nehi Beverage Company of Hawaii for the fiscal periods ended June 30, 1943; June 30, 1944; June 30, 1945; June 30, 1946, and December 10, 1946, marked Exhibits 24, 25, 26, 27 and 28, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

### XXIII.

That Schedules showing the income and expenses for the period from September 30, 1942, to September 30, 1950, the payments received as distributions of its share of income of Nehi Beverage Company of Hawaii, and the inventories of assets of Trust No. 1 at September 30, 1950, as shown by the books and records of said Trust, marked Exhibits 29, 30\* and 31, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

### XXIV.

That Schedules showing the income and expenses for the period from February 28, 1943, to February 28, 1951, the payments received as distributions of its share of income of Nehi Beverage Company of Hawaii, and the inventories of assets of Trust No.

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\*By agreement of the parties, Exhibit 30 is omitted.

2 at February 28, 1951, as shown by the books and records of said Trust, marked Exhibits 32, 33 and 34, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### XXV.

That Trust No. 1 and Trust No. 2 duly filed federal fiduciary returns each year and duly paid the tax shown to be due thereon. Schedules showing the items of income and deductions shown on said tax returns of Trust No. 1 and Trust No. 2, marked Exhibits 35 and 36, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes. Photostatic copies of the fiduciary tax returns filed by said Trust No. 1 for the years 1943, 1944, 1945 and 1946, marked Exhibits 37, 38, and 39 and 40, respectively, and by said Trust No. 2 for the same years, marked Exhibits 41, 42, 43 and 44, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### XXVI.

That a photostatic copy of the joint tax return filed by petitioners for the year 1942, photostatic copies of the tax returns of petitioner Roy Eaton for the years 1943, 1944, 1945 and 1946, and of petitioner Genevieve Eaton for the years 1945 and 1946, marked Exhibits 45, 46, 47, 48, 49, 50 and 51, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XXVII.

That in the deficiency notice addressed to petitioner Roy Eaton, respondent increased income from the partnership, Nehi Beverage Company of Hawaii, by the disallowance of net sampan operating losses in the amounts of \$5,509.08 and \$1,104.37 for the years 1944 and 1945, respectively. It Is Hereby Stipulated and Agreed that said deductions are allowable deductions from total partnership income for said years, And It Is Further Agreed that a net capital gain of \$392.00 on the sale of said sampan in 1945, which was reported on the partnership return of said partnership for the fiscal year ended June 30, 1945, is properly includable in the income of said partnership for said fiscal year.

## XXVIII.

That by virtue of the Hawaiian Community Property Law, which became effective as of June 1, 1945, petitioner Genevieve Eaton was entitled to one-half of all of the income of her husband, petitioner Roy Eaton, from and after that date.

## XXX.

That the entire amount of the deficiency asserted against petitioner Genevieve Eaton arises by reason of her community property interest in the income of her said husband, petitioner Roy Eaton.

/s/ MILTON CADES,

Counsel for Petitioners.

/s/ CHARLES OLIPHANT, CWN  
Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

## EXHIBIT No. 1

May 21, 1942.

Via Clipper.

Nehi Corporation,  
Columbus, Georgia.

Attention: Mr. C. C. Colbert.

Gentlemen:

As the holder of your franchises throughout the Territory of Hawaii for Nehi, Par-T-Pak and Royal Crown, which franchises are entirely personal to me, I am somewhat exercised, in view of current conditions, concerning the manner in which I may be able to guarantee the future of my wife and children in the event I should die. As you know, I hold valuable leaseholds and have a very considerable investment in equipment for the bottling and distribution of Nehi products locally. In fact I have put "my all" into this Nehi plant and am devoting my entire time and efforts in promoting Nehi products here in the Territory of Hawaii. It is only natural that in the event of my death I would want the business to continue without interruption and the benefits of this my principal asset to accrue to my wife and children.

You have no doubt encountered similar situations many times in the past and must have some ideas as to how my situation could be satisfactorily handled under the terms of your franchises.

May I hope to have your advice in this regard at your earliest convenience?

Sincerely,

**ROY EATON.**

EXHIBIT No. 2

Nehi Corporation  
Columbus, Georgia

June 3, 1942.

Mr. Roy Eaton,  
Nehi Beverage Company of Hawaii,  
Kona and Hopaka Streets,  
Honolulu, Hawaii.

Dear Mr. Eaton:

It was very gratifying to receive your communication of May 21. Of course we have heard from you through George Silver, ever since he finally succeeded in making his first contact, after December 7, 1941.

Aside from the question discussed in your letter of the 21st, I hope that all other matters pertaining to your operations are getting along as well as could be expected under existing circumstances.

Your question of course is one which is the same for every person who obtains our franchises or others of a similar nature. I judge that the question is one of protecting for your own family valuations that you have built up yourself, which you fear might to some extent be dissipated or depreciated in the case of your own untimely death.

Our franchises are personal contracts issued to individuals. They are not transferable without our consent nor are they inheritable. However, it is and always has been our policy to deal in the utmost fairness with our bottlers and we are not unaware of their efforts and investments. When a bottler

meets an untimely death you may be sure it is our desire to conserve for his family all that we can and to follow so far as possible the wishes of his family with respect to operation or disposal of the business.

Now, I know, I am asking you to rely on faith and not on contractual obligation. However, I must do that since we cannot in advance agree to future transfers of franchises. I am sure you need have no concern upon this subject since I know the policy of our Company and its interest in the welfare of its bottlers and their families.

I believe you will agree that all of our bottlers must in large degree rely upon the good faith of our Company. In our franchises we reserve the right of cancellation but never have we exercised that right for the purpose of diminishing values nor unless the circumstances compelled cancellation.

After reading the foregoing, I shall be glad to hear from you further, with any suggestion that you yourself might have in the matter.

With best wishes, I am,

Yours sincerely,

/s/ C. C. COLBERT,

President.

CCC:LLJ.



## EXHIBIT No. 3

Via Clipper.

July 7, 1942.

Mr. C. C. Colbert,  
Nehi Corporation,  
Columbus, Georgia.

Dear Mr. Colbert:

Thank you very much for your prompt reply to my letter of May 21. I am happy to report that our operations are getting along very well under the existing circumstances.

As Mr. Silver has no doubt told you we are not hampered by sugar quotas. However the new crown rationing order could prove very difficult because of the length of time between the placing of an order and receipt of crowns. I understand that the Crown Cork and Seal Company is making every effort to secure some exceptions to the order as it pertains to Hawaii. They were successful in having the time limit extended under the former order and I am very hopeful that they will succeed again.

If the crown manufacturers will give us seventy per cent of last years sales plus the amount needed by military posts which I understand is the present plan, the limitations on use will not materially affect us because such a large percentage of our business is with government agencies.

We are having plenty of trouble obtaining adequate labor and other difficulties, but I am sure they are not worse than other businesses are faced with everywhere and I am very grateful that we are

getting along as well as we are. George Silver has been most cooperative and helpful and it is really a great comfort to have such a fine organization as Nehi backing us up.

Regarding the working out of some plan for the protection of the business and my family if something should happen to me, it is difficult for me to know what to suggest not being familiar with your practices under those circumstances.

On the mainland I would imagine your district manager or one of his assistants would be available to do what was necessary in supervising continued purchases and use of concentrate and crowns, etc., until a definite settlement has been made. He could determine whether the plant personnel was adequate to carry on and if a sale was involved represent Nehi Corporation in such a transaction.

Over here all this would be impossible. Under present circumstances it would probably be a matter of months before anyone could get here and even longer before they could return. Territorial laws governing inheritance, particularly where children are involved would further complicate matters.

The loss which would be sustained by Nehi Corporation as well as my estate in case it was not possible to continue operations for even a brief period would be considerable. I do not question the fact that Nehi Corporation would be fair in dealing with my estate. However, based on ten years experience as an executive of California's largest Memorial Park, I know that untold loss to say nothing of inconvenience and grief could be prevented if

proper arrangements were made regarding the disposition of estates before death occurs. Making such arrangements under existing conditions is even more important than during normal times.

Until the matter can be gone into more thoroughly I would very much appreciate a letter stating in detail just what procedure you would want the executors of my estate to follow to insure the continuance of the business until arrangements could be made to have the franchise placed in another name.

Sincerely yours,

ROY EATON.

RE:rh.

EXHIBIT No. 4

Nehi Corporation  
Columbus, Georgia

July 14, 1942.

Mr. Roy Eaton,  
Nehi Beverage Company,  
Kona and Hopaka Streets,  
Honolulu, Hawaii.

Dear Mr. Eaton:

I have your interesting letter of July 7, and the information contained in it is very heartening. We regret that we have been in no better position to help you under the existing circumstances.

Undoubtedly the efforts the Crown Cork & Seal Company is making is the best course that can be pursued in the matter of your crown supply. They

did get permission to ship our bottler at San Juan, Puerto Rico a larger supply of crowns than the 20% inventory provision in the crown order, with the agreement that they would of course be used only in accordance with the order. We will see if our Washington representative can be of any assistance in this matter with respect to your supply.

It seems to us that if in your will you were to authorize and instruct your executors to continue the operation of the plant until a sale could be made suitable to them and to Nehi Corporation, or until such other time as would be agreed upon between your executors and Nehi Corporation, that would be about as much insurance as you could provide for adequate continuance.

You will of course have selected executors in whom you have complete confidence as to integrity and judgment, and you undoubtedly have confidence in the integrity of Nehi Corporation, or you would not have made the large investment you did in connection with your relationship here.

Therefore, if you place your executors in the position of exercising discretion and using their judgment in the matter of continuing the business in collaboration with the judgment of Nehi Corporation management, you will have left the matter in the best possible shape in our opinion.

If there is any further thought that we may have in this connection, and in respect to which it may seem advisable to go more into detail with, our Vice President and General Counsel, Mr. Willis Battle, will write you.

Again I say it was very thoughtful of you to write so clearly about the situation over there, and while we know George Silver has been keeping in continuously close contact with you, as close as possible, we are happy always to have this kind of advice directly as well.

With kindest regards and best wishes, we are

Yours sincerely,

NEHI CORPORATION.

/s/ C. C. COLBERT,  
President.

CCC:BB.

P.S. If there is anything we can do about the crown matter, you will hear from us as soon as possible.

C.C.C.

EXHIBIT No. 5

This Indenture, dated this 30th day of September, 1942, by and between Roy Eaton, of Honolulu, City and County of Honolulu, Territory of Hawaii, a citizen of the United States of America, hereinafter called the "Settlor," and Bishop Trust Company, Limited (a corporation duly organized and existing under the laws of the Territory of Hawaii and a majority of whose officers and directors are citizens of the United States of America), hereinafter called the "Trustee,"

## Exhibit No. 5—(Continued)

Witnesseth That:

The Settlor, in consideration of the love and affection he bears the beneficiaries and of the acceptance by the Trustee of the trust herein created, does hereby transfer, set over and deliver to the Trustee, its successors in trust and assigns, the sum of Fifteen Thousand and no/100ths Dollars (\$15,000.00);

To Have and to Hold the same, together with all other property which may hereafter be or become a part of the trust estate hereby created, unto the Trustee, its successors in trust and assigns, in trust nevertheless for the uses and purposes hereinafter stated, that is to say:

(a) The Trustee shall contribute the sum of Fifteen Thousand and no/100ths Dollars (\$15,000.00) to the capital of the partnership known as Nehi Beverage Company of Hawaii, a partnership duly organized and operating under that certain Special Partnership Agreement dated September 30, 1942, for a thirty per cent (30%) interest therein, and continue to be a special partner in such partnership, said sum being the fair and reasonable value of said interest duly ascertained as of September 30, 1942;

(b) The Trustee shall accumulate all net income from the said trust estate during the continuation of this trust; Provided, However, that the Trustee during such time may in its sole discretion pay out of the net income of the said trust estate to or apply for the use and benefit of any of the children of the Settlor or the lawful issue of any of them who shall

## Exhibit No. 5—(Continued)

die during the continuance of this trust, such amounts as may be necessary for their maintenance, support and education; Provided, Further, that the Trustee shall not in any year pay out or apply or use for the benefit of the issue of any deceased child of the Settlor more than one-third ( $\frac{1}{3}$ ) of the net income of the said trust estate for such year; and all income not so distributed in any calendar year shall, at the end of such year, be added to and become a part of the corpus of the trust estate;

(c) The Trustee is hereby authorized and empowered to pay from the corpus of the said trust estate any sum or sums from time to time and for such periods of time as in its sole discretion it shall deem necessary or proper for the support, maintenance and education of any of the children of the Settlor whenever the Trustee in its sole discretion deems the income which any of them is receiving insufficient for such purposes; and such payment shall not be deemed an advancement of corpus to any child, and the Trustee shall be under no obligation in such use of corpus to pay or use corpus equally or proportionately for said children, and all payments from the corpus of the trust estate shall be binding upon all beneficiaries hereunder;

(d) This trust shall cease and determine when the youngest of the children of the Settlor, who shall continue to survive, shall have attained the age of twenty-five (25) years, or upon the prior death of the last survivor of the said children and the property comprising the said trust estate, to-

## Exhibit No. 5—(Continued)

gether with the accumulated income thereof, shall at such time vest in and be transferred, conveyed and delivered by the Trustee absolutely and in fee simple, free and clear from any trusts, in equal shares to those who are surviving of the children of the Settlor, and the lawful issue of any of said children who shall then be dead, said issue to take per stirpes and not per capita; and in the event that this trust shall have ceased and determined upon the death of the last survivor of the children of the Settlor, and no lawful issue of said children shall be then surviving, then the said property and income shall at such time vest in and be transferred, conveyed and delivered by the Trustee absolutely and in fee simple to those persons other than the Settlor who would be the heirs-at-law of the last survivor of the children of the Settlor under the statutes of descent of the Territory of Hawaii in force and effect at the time of his or her death, the same as if he or she had died intestate at that time; Provided, However, that in the event that the partnership known as "Nehi Beverage Company of Hawaii" shall terminate during the continuance of this trust, the Trustee may determine this trust at any time thereafter which to the Trustee may seem best, and thereupon the property comprising the said trust estate, together with the accumulated income thereof, shall vest in and be transferred, conveyed and delivered by the Trustee, absolutely and in fee simple, free and clear from any trusts, in equal shares to those who are surviving of the chil-



## Exhibit No. 5—(Continued)

dren of the Settlor and the lawful issue of any of said children who shall then be dead, said issue to take per stirpes and not per capita ;

(e) The Trustee shall receive, hold, manage and control the said trust estate, collect the income therefrom and pay all charges incident to trust estates and properly payable by said trust estate therefrom; and the Settlor authorizes the Trustee to retain either permanently or temporarily or for such period of time as it may deem expedient any property conveyed, assigned or delivered to the Trustee by the Settlor of whatever nature; and the Settlor directs that the said Trustee shall not be held liable for any loss resulting to said trust estate by reason of the Trustee's retaining any such property or for any error of judgment in this respect;

(f) The Settlor authorizes and empowers the Trustee to sell at public or private sale, convert, transfer, exchange, mortgage, hypothecate and otherwise deal in or dispose of the whole or any part of the property, real, personal or mixed, which may be from time to time a part of the trust estate, with power to accept any purchase money mortgage or mortgages for any part of the purchase or exchange price; to invest and reinvest the whole or any part of the assets of the said trust estate, and in investing and reinvesting any assets of said trust estate the Trustee may invest in common or preferred stocks of corporations, bonds, notes, debentures, participation or investment certificates and/or in any other property, real or personal, in so far as in

## Exhibit No. 5—(Continued)

its judgment it shall deem such investments advisable, it being the intention of the Settlor, under the foregoing provisions, to grant to the Trustee full power to invest and reinvest money in such investments as it shall deem desirable and suitable investments for trust funds without being restricted to the classes of investments which trustees are permitted by law to make, provided, however, that the Trustee shall obtain the consent of the Settlor to make such investments during his lifetime, and provided further that in the event the Settlor shall die before the termination hereof, the Trustee shall thereafter be restricted in the making of investments of trust funds to the classes of investments which trustees are permitted by law to make, except that in any event the Trustee may, without liability for any losses resulting therefrom, make advances or loans to or other or further investments in the partnership known as "Nehi Beverage Company of Hawaii"; the Settlor authorizes and empowers the Trustee, upon any increase of the capital stock of any corporation in which said trust estate shall own shares, to exercise any preemptive rights to such shares to which said trust estate may be liable and/or to subscribe for such additional shares as in the judgment of the Trustee shall be an advisable investment; and for this purpose and for other purposes of this trust, the Settlor authorizes and empowers the Trustee to borrow money either from itself or from others and upon such terms and conditions as it may deem appropriate; the Trustee

## Exhibit No. 5—(Continued)

shall have the right and power to vote either directly or by proxy the stock of any corporation that may be a part of said trust estate from time to time at all meetings of stockholders as the Trustee may deem best;

(g) Stock dividends shall be treated as capital of the trust estate and all stock acquired by the Trustee under the exercise of rights to subscribe or the net proceeds realized by the Trustee from the sale of rights to subscribe shall be treated as capital of the trust estate and all other corporate distributions shall be treated as income; provided, however, that where a distribution is made through the reduction of any corporate stock held by the Trustee, or, in the exclusive discretion of the Trustee it appears to be made in or as a result of a partial or complete liquidation or dissolution of the corporation, the Trustee may in its discretion make such apportionment of any such distribution between income and capital as to it may seem just; the Trustee shall have full power and authority to decide and determine in all doubtful cases what property or moneys received by it is capital and what is income; and also in all doubtful cases to decide and determine what expenses and other charges are payable out of income and what out of capital; and also in all doubtful cases to decide and determine what proportion of payments for expenses of or charges against the trust estate are payable from income and what from capital; and all beneficiaries shall be bound by the decision and determination of the

## Exhibit No. 5—(Continued)

Trustee in regard to all such allocations between capital and income; the Trustee shall have authority in and discretion to prorate during the year and withhold from the income received by the trust estate an amount sufficient to pay proportionate shares of the expenses payable by the trust estate so that said payments of net income may be more regular and even in amount, and to withhold such amounts of income and/or principal as it may deem necessary to protect itself from any possible liability for taxes and/or costs or expenses in connection with or arising out of possible claims therefor;

(h) The Settlor may transfer, convey and assign to the Trustee any property in addition to that hereinbefore referred to, to be held upon the trust hereby created, and thereafter such additional property shall be and form a part of the trust estate;

(i) The Trustee shall render annual statements of account to the persons who are the beneficiaries of this trust, as hereinabove provided, but the Trustee shall not be required to account in any court unless requested so to do by a beneficiary; Provided, However, that the Trustee may whenever it shall deem it advisable file accounts in any court having jurisdiction thereof for approval, the costs of said proceeding to be paid out of the trust estate;

(j) If any person entitled to receive any of the income and/or corpus of the trust estate shall be a minor, the Trustee may pay the share of income and/or corpus to which said minor is entitled to

## Exhibit No. 5—(Continued)

either parent or to the natural or legally appointed guardian of such minor, for the account, benefit or use of such minor, and the receipt of such parent or natural or legally appointed guardian shall be a complete release, discharge and acquittance of the Trustee to account further for any payment or payments so made, and if any beneficiary is a minor, the statements of account may be furnished to either parent or to the natural or legally appointed guardian of such minor beneficiary;

(k) The Trustee shall have the custody and safe-keeping of all moneys and securities belonging to the trust estate which are received or collected by the Trustee. The Trustee may rely upon auditor's reports of the business of the partnership known as "Nehi Beverage Company of Hawaii," and shall not be required to make any independent investigation into its affairs or accounts, and the Trustee shall not be answerable or accountable for any loss or damage resulting from any error of judgment or otherwise except through its own gross negligence or wilful default, nor shall the Trustee be answerable or accountable for any loss or damage resulting from any act consented to by the Settlor or for any loss or damage resulting from any investment in or loan or advance to the partnership known as "Nehi Beverage Company of Hawaii";

(l) No beneficiary hereunder shall have the power or authority to anticipate in anywise any of the rents, issues, profits, income, moneys or payments herein provided to be devoted or paid to him

## Exhibit No. 5—(Continued)

or her or any part thereof, nor to alienate, encumber, convey, transfer or dispose of the same or of any interest therein or part thereof, in advance of payment; nor shall the same be involuntarily alienated by him or her or be subject to attachment or execution or be levied upon or taken upon any process for any debts which any such beneficiary shall have contracted or in satisfaction of any demands or obligations which he or she shall incur. All payments or distribution of either income and/or principal as hereinabove provided shall be made by the Trustee and subject to the provisions of subparagraph (j) hereinabove shall be valid and effectual only when made to the beneficiary to whom the same shall appertain and belong, and upon his or her individual receipt; Provided, However, that when and while the person so entitled to receive such payment shall be without the bounds of the Territory of Hawaii, such payment may be made to any formally appointed agent of such person, but only upon the personal receipt above provided for;

(m) It is hereby declared that this agreement shall be and is hereby made irrevocable by the Settlor and the Settlor reserves the right to amend this instrument only by adding other property to be and become a part of the estate held under the terms hereof, and the right to alter, amend, cancel or revoke any provisions of this instrument, save and except paragraphs (a), (b), (c) and (d) hereof; Provided, However, that in no event shall any of

Exhibit No. 5—(Continued)

the property or the income thereof belonging to the trust estate be paid to or inure to the benefit of the Settlor, and Provided Further, that any amendments made by the Settlor shall be made by instrument in writing and acknowledged and filed with the Trustee, and that the alteration, amendment, cancellation or revocation of any provision of this instrument shall be made only with the written consent and approval of the Trustee;

The said Bishop Trust Company, Limited, hereby accepts the within trust and covenants and agrees with the Settlor that it will faithfully discharge and carry out the same.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written.

/s/ ROY EATON,  
Settlor.

[Seal] BISHOP TRUST COMPANY,  
LIMITED,

By /s/ W. A. WHITE,  
Its Vice President;

By /s/ E. BENNER, JR.,  
Its Asst. Vice Pres. Trustee.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, before me personally appeared Roy Eaton, to me known to be the

## Exhibit No. 5—(Continued)

person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 31st day of October, 1942, before me appeared W. A. White and E. Benner, Jr., to me personally known, who being by me duly sworn, did say that they are Vice President and Asst. Vice President, respectively, of Bishop Trust Company, Limited, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said W. A. White and E. Benner, Jr., acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ THEODORA B. TOWNSEND,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.



## EXHIBIT No. 6

This Special Partnership Agreement, dated this 30th day of September, 1942, by and between Roy Eaton, Charles P. Johnson and Walter L. Prock, Jr., all of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter referred to as "General Partners," and Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, hereinafter referred to as the "Special Partner,"

## Witnesseth That:

Whereas, the parties hereto having mutual confidence in each other, do hereby form with each other a Special Partnership for the purpose of acquiring and thereafter carrying on the business heretofore carried on by Roy Eaton and known as "Nehi Beverage Company of Hawaii," from and after the close of business on September 30, 1942, and for other purposes as hereinafter provided upon the following terms and conditions, that is to say:

1. Purposes. The purposes of the partnership shall be to acquire as at the close of business on September 30, 1942, all assets and to carry on the business heretofore carried on and conducted by Roy Eaton under the name of "Nehi Beverage Company of Hawaii"; to buy, sell, import, export, bottle, manufacture, trade and deal in beverages, extracts, syrups and goods, wares and merchandise of every kind and nature and to engage in and carry on the business of general wholesale and re-

## Exhibit No. 6—(Continued)

tail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers; to buy or otherwise acquire or hold, use, improve, develop, mortgage, lease or take on lease, sell, convey and in any and every other manner deal in and with and dispose of real estate, buildings and other improvements, hereditaments, easements and appurtenances of every kind in connection therewith, or any estate or interest therein of any tenure or description, to the fullest extent permitted by law and also any and all kinds of chattels, goods, wares, merchandise and agricultural, manufacturing and mercantile products and commodities and patents, licenses, debentures, securities, stocks, bonds, commercial paper and other forms of assets, rights and interests and evidences of property or indebtedness, tangible or intangible; to undertake and carry on any business investment, transaction, venture or enterprise which may lawfully be undertaken or carried on by a partnership, and any business whatsoever that may seem to the partnership convenient or suitable to be undertaken whereby, directly or indirectly, to promote any of its general purposes or interests or render more valuable or profitable any of its property, rights, interests or enterprises; and to acquire by purchase, lease or otherwise, the property, rights, franchises, assets, business and good will of any person, firm, association or corporation engaged in or authorized to conduct any business or undertaking which may be carried on by this partnership or possessed of any

## Exhibit No. 6—(Continued)

property suitable or useful for any of its own purposes, and carry on the same; and undertake all or any part of the obligations and liabilities in connection therewith on such terms and conditions and for such consideration as may be agreed upon; and to pay for the same either all or partly in cash, stocks, bonds, debentures or other forms of assets or securities; and to effect any such acquisition or carry on any business authorized by this Agreement, either by directly engaging therein, or indirectly by acquiring the shares, stocks or other securities of such other business or entity and holding and voting the same and otherwise exercising and enjoying the rights and advantages incident thereto; and such other business as may be necessary, suitable or proper to the accomplishment of their purposes or connected or related thereto as the partners from time to time mutually may agree.

2. Name. The partnership shall be conducted and carried on under the same name and style of Nehi Beverage Company of Hawaii, and the place or places of business shall be at Honolulu aforesaid, and/or at such other place or places as the partners may from time to time determine.

3. Capital. The capital of the partnership as of the date of commencement of the term provided for by this Agreement, shall be the sum of \$50,000.00, which amount is the cost of the net assets acquired by the partnership as of September 30, 1942, and it is agreed that the contributions of capital of each

## Exhibit No. 6—(Continued)

of the partners to the Agreement shall be as follows:

	Amount	Interest & Percentage
Roy Eaton . . . . .	\$30,000.00	60%
Charles P. Johnson . . . .	2,500.00	5%
Walter L. Prock, Jr. . . .	2,500.00	5%
Bishop Trust Co., Ltd., Trustee under Deed of Trust of Roy Eaton, dated Sept. 30, 1942. . .	15,000.00	30%
	\$50,000.00	100%

It Is Understood and Agreed that Bishop Trust Company, Limited, Trustee as aforesaid, shall be a Special Partner in its capacity as Trustee and not individually and shall have all the powers, rights and duties of a Special Partner as prescribed by Chapter 225 of the Revised Laws of Hawaii, 1935, as the same now is or as the same may from time to time be amended, and that the Special Partner shall not be liable for the debts of the partnership to any extent beyond that set forth in the provisions of Section 6887 of the Revised Laws of Hawaii, 1935, as the same now is or as the same may from time to time to amended.

4. Compensation of General Partners and Division of Profits. From time to time, and as the General Partners may agree, the General Partners

## Exhibit No. 6—(Continued)

actively engaged in the business of the partnership shall receive, as compensation for services rendered to the partnership, a salary chargeable for purposes of computing net profits hereunder, as an expense of the business, in such amount as the General Partner or Partners owning the majority in interest of the capital contributed by the General Partners, may from time to time agree upon, constituting the reasonable value of the services rendered to the partnership. All of the remaining net profits of the partnership shall be divided for each annual period in proportion to the above-stated interest of each of the partners in the original capital of the partnership, and all losses of the partnership for each annual period shall be divided among the partners in the same manner as herein provided for the division of profits; Provided, However, that General Partners Charles P. Johnson and/or Walter L. Prock, Jr., shall only be entitled to such amount of the net profits of the business during any period of time in which the business of the partnership is not the principal activity of said partner, as is not in excess of 12% per annum of the amount of said General Partner's capital interest, and the remaining net profits of the partnership shall be divided in proportion to the above-stated interest of each of the other partners in the original capital of the partnership. Any partner may withdraw from the partnership such portion of the profits attributable to said partner's interest as the General Partners may from time to time deem advisable. Amounts

## Exhibit No. 6—(Continued)

not withdrawn shall not be added to the capital account but shall be credited to advance accounts in the names of the respective partners for whom said amounts are being held, and no interest shall be paid on said accounts.

5. Services of the Partners. The General Partners shall diligently give as much of their time, attention and services to the business of the partnership as the General Partner or Partners owning the majority in interest of the capital contributed by the General Partners, may deem advisable and shall be faithful to the partnership in all transactions relating to said business. No General Partner shall, without the written consent of all the partners, employ the capital or credit of the partnership in any other business than that of the partnership, and no partner shall, without the written consent of all the partners, during the continuation of the partnership, carry on or be concerned or interested directly or indirectly, in any other business which is in direct competition to the partnership.

6. Bankers of the Partnership. The bankers of the partnership shall be Bishop National Bank of Hawaii at Honolulu and/or such other bankers as the partners shall from time to time determine, and all money and money instruments received by and belonging to the partnership shall be deposited to the credit of the partnership with the partnership bankers, except that such a petty cash fund as may mutually be agreed upon between the General Part-

## Exhibit No. 6—(Continued)

ners from time to time, may be kept on hand for use in the business.

7. Limitation on Powers of Partners. The General Partners only shall have authority to transact the business of the partnership or incur obligations or liabilities. In all matters except as otherwise provided in this Agreement, the determination by the General Partner or Partners owning the majority in interest of the capital contributed by the General Partners shall be binding upon and shall establish the policy of the partnership. The Special Partner at all times may investigate the partnership affairs and advise the General Partners as to its management. No partner shall, without the written consent of the other partners, draw, accept or sign any bill of exchange or promissory note or contract any debt on account of the partnership or employ any of the moneys or effects thereof or in any manner pledge the credit thereof except in the usual and regular course of the business subject to the provisions of this Agreement. No partner, during the continuation of this partnership, without obtaining the consent thereto of the other partners, shall assume any liability for another or others by means of endorsement or by becoming guarantor, surety or insurer, and each of the General Partners agrees at all times to keep indemnified the other partners and their personal representatives and the property of the partnership against any liability for or in connection with his present or future separate debts or engagements or actions, proceedings, claims or demands in respect thereof.

## Exhibit No. 6—(Continued)

8. Partners Not to Assign Interest. No General Partner shall assign or mortgage his share of, or interest in, or any part of the share of or interest in the partnership, or the assets or profits thereof; Provided, However, that any partner may purchase all or any part of the interest of any other partner. Additional capital contributions resulting in a change in the percentage of interest of any partner, or loans or advances to the partnership on which interest is to be computed and charged for the purpose of computing net profits hereunder, as an expense of the business, may only be made with the approval of the General Partner or Partners owning the majority in interest of the capital of the partnership; Provided Further, that in the event any partner shall make additional capital contributions to the partnership, the other partners shall have the right to make similar contributions in order to keep the interest of each partner in the partnership in proportions equal to those in existence at the time of the inception of the partnership. The Special Partner may assign its share or interest in the partnership only with the consent of the General Partners evidenced by written consent attached to such assignment and filed in the office of the partnership, and the General Partners shall have full power and discretion to give or withhold such consent.

9. Books of Account and Access Thereto. Proper partnership books of account shall be kept by the



## Exhibit No. 6—(Continued)

partners and entries shall be made therein of all transactions and all such matters and things as usually are entered in books of account kept by persons engaged in the same or similar businesses. Such books of account and all documents, letters, papers, instruments and records belonging to the partnership shall be kept at the office of the partnership and each partner shall, at all times, have full and free access to examine and copy the same. The books of the partnership may be audited periodically at such times as the partners shall determine, and copies of the auditor's report shall be delivered to each partner, and in such audit the capital accounts and advance accounts of the partners and of each partner shall be stated as at the end of each period.

10. Annual Accounts. A general account shall be taken annually of the assets and liabilities of the partnership, of all dealings and transactions of the same during the then preceding year, of all matters and things usually included in accounts of a like manner taken by persons engaged in like businesses, and in taking such account a just valuation shall be made of all items requiring valuation, and such annual account shall state the capital of the partnership and the interest of each partner therein at the end of the period of accounting, such general account to be sent to each partner, and unless within three (3) months any partner shall object to the same, the same shall be binding upon the partners, except for manifest errors and fraud.

## Exhibit No. 6—(Continued)

11. Determination of Partnership. The partnership may be determined by a majority in interest of the General Partners at any time upon giving not less than two (2) months' previous notice in writing to the other partners of the intention of the majority in interest of the General Partners in that behalf, and at the expiration of such notice the partnership shall determine accordingly. The term "majority in interest of the General Partners" shall mean any one or more of the General Partners, the aggregate of whose capital account, as shown by the books of the partnership, shall be in excess of Fifty Per Cent (50%) of the total capital interest of all of the General Partners of the partnership. Upon the determination of the partnership from whatever cause, the General Partners agree that they will make a true, just and final account of all things relating to said business and in all things duly adjust the same. After the affairs of the partnership are adjusted, its debts paid and discharged and the expenses of liquidation shall have been paid, all of the balance then remaining shall be applied first in payment to each partner or his representative of the balance due to each partner as shown in the advance account of said partner, then in payment of his share of the capital as shown on the books of the partnership as of the close of business of the partnership, and the balance shall be divided in the same manner as hereinbefore provided for the division of profits. In the event that the balance remaining, after the payment of said

## Exhibit No. 6—(Continued)

debts and expenses and the balance due to each partner as shown in the advance account of said partner, is insufficient to pay the full capital account of all the partners, then such balance shall be applied first in payment to the Special Partner of its share of the capital as shown on the books of the partnership as at the close of business of the partnership, and the balance paid to each General Partner in proportion to his capital as shown on the books of account of the partnership as at the close of business of the partnership. In the event that the balance remaining after the payment of said debts and expenses is insufficient to pay in full the balance due to each partner as shown in the advance account of each partner, then the amount shown as due to the Special Partner shall be paid first; the share of the capital of the Special Partner as shown on the books of the partnership shall be paid next, and the remaining balance, if any, shall be prorated among the General Partners according to the respective amounts shown on the books to be due on the advance account of each of said partners. The partners or their representatives shall execute such instruments for facilitating and effecting the realization and the division of the assets of the partnership and for their mutual indemnification and release and otherwise as may be requisite or proper.

12. Death of General Partner Roy Eaton. If General Partner Roy Eaton shall die before the expiration of the partnership, his representative

## Exhibit No. 6—(Continued)

shall have the option (such option to be declared by notice in writing given to the surviving partners or left at the office of the partnership within six calendar months after his death) of succeeding to or carrying on the interest of the deceased partner in said business, either as a General Partner in accordance with law, or as a Special Partner under the provisions of Chapter 225, Revised Laws of Hawaii, 1935, as the same now is or as the same may from time to time be amended; and if such option shall be exercised, the said business shall be carried on during the residue of said term as from the death of said Roy Eaton, as nearly as may be according to the provisions of these presents, but so that the representative of said Roy Eaton shall succeed to his share in said business and be substituted for him as a dormant General Partner or as a Special Partner; Provided, that in case the representative of said Roy Eaton shall elect to become a dormant General Partner or a Special Partner by virtue of such option as aforesaid, all proper instruments for carrying out the provisions of this present clause shall be executed and made between his representative and the surviving partners and all proper notices, publications, petitions or court proceedings shall be made and executed or taken at the expense of the partnership.

13. Option to Purchase Share of General Partners. General Partner Roy Eaton shall have the option at any time during the term of the partnership, and his representative in the event of the death of General Partner Roy Eaton shall have the option

## Exhibit No. 6—(Continued)

to purchase the interest in the partnership of any or all the other General Partners for an amount equivalent to the fair value thereof as determined by an auditor or auditors of the partnership or by the value of the interest as shown on the books of account of the partnership, whichever amount is less. In determining the fair value of such interest no value shall be attributable to good will. If said Roy Eaton or his representative shall exercise his option and the purchase is consummated, the sale shall be considered as effective on the date when the option was exercised, and the General Partner whose interest is so purchased, shall not be entitled to receive any share of the net profits from and after said date, but shall be entitled to receive interest at the current bank rate upon the amount to be paid for said General Partners' interest from said date. Said Roy Eaton or his representative shall have the right to make payment therefor by note payable in three equal annual installments with interest thereon at the current bank rate.

14. Option to Purchase Share of Deceased Partner or of General Partner Desiring to Terminate Partnership. In the event of the death of any General Partner other than Roy Eaton or of the giving of notice to terminate the partnership by any General Partner other than Roy Eaton, the said Roy Eaton shall have the option (to be exercised by notice in writing given to the Executor or Administrator, if any, or if none, then left at the office of

## Exhibit No. 6—(Continued)

the partnership, or by notice in writing to the General Partner giving such notice to terminate the partnership and leaving a copy of said notice at the office of said partnership within six calendar months after the death of such General Partner or of the giving of notice to terminate the partnership, as the case may be) to purchase the interest in the partnership of such deceased General Partner or of such General Partner giving notice to terminate the partnership, for an amount equivalent to the fair value thereof as determined in accordance with the provisions of Paragraph 13 hereinabove, and all the provisions of said Paragraph 13 shall be applicable in the event that said Roy Eaton shall exercise his option to purchase the share of any other General Partner in accordance with the provisions of this paragraph.

15. Winding Up on Death of General Partner. In case the representative of said Roy Eaton shall not exercise his option to succeed to the deceased partner's share in said business as a General or a Special Partner upon the death of General Partner Roy Eaton, and in the event that upon the death of any other General Partner except said Roy Eaton, the said Roy Eaton shall not purchase the interest of said deceased General Partner, then the partnership shall be wound up at the expiration of six calendar months from the date of such death or such sooner time as the surviving partners and the representative of the deceased General Partner may

## Exhibit No. 6—(Continued)

agree upon, and its affairs settled in the manner provided in Paragraph 11 hereof.

16. Bankruptcy, Etc. If any of the General Partners shall, at any time during the partnership, become incapacitated, bankrupt, insolvent or enter into any composition or arrangement with or for the benefit of his creditors, or commit any breach of any of the stipulations or agreements herein contained, the other General Partners may determine the partnership, so far as such last mentioned General Partner is concerned, by giving notice in writing left at the office of the partnership to the partner becoming incapacitated, bankrupt, insolvent or entering into such composition or arrangement or committing such breach, and may publish notice of dissolution of the partnership in regard to such last mentioned General Partner without prejudice to the remedies of the other General Partners for any antecedent breach of any of the stipulations or agreements aforesaid.

17. Arbitration. If, at any time during the continuation of the partnership or after the dissolution or determination thereof, any dispute, difference or question shall arise between the partners or their representatives touching the partnership or the accounts or transactions thereof, or the dissolution or winding up thereof, or the construction, meaning or effect of these presents, or anything herein contained, or the right or liabilities of the partners or their representatives under these presents, or otherwise in relation to the premises, then

## Exhibit No. 6—(Continued)

every such dispute, difference or question shall, at the desire of any partner, be submitted to and determined by an arbitrator mutually agreed upon by all the partners; and in the event that all the partners do not agree upon the appointment of such an arbitrator within ten (10) days after any partner shall notify the other partners of his desire to have any dispute, difference or question so determined, then by three arbitrators in the manner provided by Chapter 116, Revised Laws of Hawaii, 1935, as the same now is or may from time to time be amended, in which case any partner may give to the other partners written notice of his desire to have an arbitration of the matter in dispute and name one of the arbitrators in said written notice, whereupon the other partners, within ten (10) days after the receipt of such notice, shall name a second arbitrator and in case of failure to do so the arbitrator already appointed shall name such second arbitrator, and the two arbitrators so appointed (in either manner) shall select and appoint the third arbitrator; and in the event that any two arbitrators so appointed shall fail to appoint a third arbitrator within ten (10) days after the naming of a second arbitrator, any partner may have the third arbitrator selected or appointed by the person being the Chief Justice of the Supreme Court of the Territory of Hawaii holding office at that time, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of



## Exhibit No. 6—(Continued)

them (including the disposition of the costs of arbitration) shall be final, conclusive and binding upon all parties unless the same shall be vacated, modified or corrected as by said statute provided. The arbitrators shall have all the powers and duties prescribed by said statute, and judgment may be entered upon any such award by the Circuit Court of the First Judicial Circuit, as provided in said statute.

18. Amendments. If, at any time during the continuance of this partnership, the parties shall deem it necessary or expedient to make any alteration in any article, clause, matter or thing herein contained for the more advantageous or satisfactory management of the partnership business, it shall be lawful for them so to do, by any writing under their joint names, endorsed on these articles or entered in any of the partnership books, and all such alterations shall be adhered to and have the same effect, from and after the time of the adoption of the same, as if the same had originally been embodied in and formed a part of these presents.

19. Term of Partnership. The term of the partnership shall be for a period commencing with the time of execution thereof and ending September 30, 1952, and subject to the provisions of Paragraph 11 hereinabove, shall continue from year to year thereafter until terminated by any General Partner by the giving of not less than six (6) months' written notice of his intention to terminate the partner-

## Exhibit No. 6—(Continued)

ship by leaving the same at the office of the partnership.

20. Definitions. The term "General Partners" as used herein shall include the heirs, executors, administrators and permitted assigns of the General Partners, and the term "Special Partner" shall include Bishop Trust Company, Limited, in its capacity as Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, and not in its individual capacity, its successors in trust and assigns.

In Witness Whereof, the parties hereto have executed these presents as of the day and year first above written.

/s/ ROY EATON,  
/s/ CHARLES P. JOHNSON,  
/s/ WALTER L. PROCK, JR.,  
General Partners.

[Seal] BISHOP TRUST COMPANY,  
LIMITED,  
Trustee Under Deed of Trust of Roy Eaton, Dated  
September 30, 1942, and Not Individually.

By /s/ W. A. WHITE,  
Its Vice President.

By /s/ E. BENNER, JR.,  
Its Asst. Vice. Pres., Special  
Partner.

Exhibit No. 6—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 31st day of October, 1942, before me appeared W. A. White and E. Benner, Jr., to me personally known, who being by me duly sworn, did say that they are Vice President and Asst. Vice President, respectively, of Bishop Trust Company, Limited, Trustee under deed of trust of Roy Eaton dated September 30, 1942, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said W. A. White and E. Benner, Jr., acknowledged said instrument to be the free act and deed of said corporation, as such Trustee.

[Seal]     /s/ THEODORA B. TOWNSEND,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, personally appeared, before me Roy Eaton, known to me to be the person described in and who executed

## Exhibit No. 6—(Continued)

the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, personally appeared before me Charles P. Johnson, known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, personally appeared before me, Walter L. Prock, Jr., known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

## EXHIBIT No. 7

## Bill of Sale

This indenture, made as of the close of business on September 30, 1942, by and between Roy Eaton, of Honolulu, City and County of Honolulu, Territory of Hawaii, a citizen of the United States of America, hereinafter called the "Seller," and Nehi Beverage Company of Hawaii, a special partnership composed of Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., all of Honolulu aforesaid, all of whom are citizens of the United States of America, as General Partners, and Bishop Trust Company, Limited, a Hawaiian corporation, and a majority of whose officers and directors are citizens of the United States of America, Trustee under Deed of Trust dated September 30, 1942, made by Roy Eaton as Settlor, as Special Partner, having its principal place of business in Honolulu aforesaid, hereinafter called the "Partnership,"

## Witnesseth That:

The Seller, for and in consideration of the sum of one dollar (\$1.00), lawful money of the United States of America, and other good and valuable consideration to him paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer, set over, confirm and deliver unto the Partnership and its successors and assigns forever;

All and singular, the rights, property, assets and privileges owned by the Seller and used in the business known as "Nehi Beverage Company of Ha-

## Exhibit No. 7—(Continued)

waii," as shown on the balance sheet prepared by Cameron & Johnstone, dated as of the close of business on September 30, 1942, a copy of which is attached hereto, incorporated herein and made a part hereof for all purposes, including particularly but not in anywise limiting the generality of the foregoing all chattels, leaseholds, improvements, machines and equipment, all furniture, office equipment, office machinery, appliances and devices, all files, records, books, accounts, inventories, together with all other personal property, goods and chattels, of every kind and description and wheresoever situate, all good will, trade names, trade connections, license, and all contracts and agreements, including any and all rights under policies of indemnity, fidelity or other bonds or insurance of any and every kind, or cash on hand or in bank or banks, bonds, mortgages, conditional sales agreements, accounts and bills receivable, promissory notes, claims, demands, equities and choses in action, and all other property and assets, tangible and intangible, of every kind or nature owned or claimed by the Seller and used by him in the business now carried on and shown on said balance sheet, save and except the consideration received by him from the partnership as the purchase price for the foregoing;

To have and to hold the same, together with all improvements, rights, easements, privileges, rents, issues and profits and appurtenances to the same or any part thereof belonging or appertaining or held

## Exhibit No. 7—(Continued)

and enjoyed therewith, unto the partnership, its successors and assigns, absolutely and forever or in fee simple as the case may be.

And the Partnership, in consideration of the foregoing, does hereby covenant and agree that it will and by these presents does assume all of the liabilities, obligations and indebtedness of the Seller, shown on said balance sheet attached hereto, and does covenant and agree to pay and discharge the same as fully and completely as though the said liabilities, obligations and indebtedness had been incurred directly by said Partnership, and to indemnify and hold harmless the said Seller from all liability, expense or obligation upon the same or arising in connection therewith;

And for the consideration aforesaid, the Seller, for himself and his heirs, executors and administrators, does hereby irrevocably appoint the Partnership, its successors and assigns, his true and lawful attorney in his name, place and stead to ask, demand, sue for and recover any and all moneys, assets or other property conveyed and transferred hereby or intended so to be and the rights and benefits therefor, and does further covenant that he, the Seller, will at any time at the request of the Partnership make, do, execute and deliver all such receipts, powers of attorney and further instrument or instruments for the better and more effectual vesting and confirming of all right and interest, property, claims and demands hereinabove conveyed

## Exhibit No. 7—(Continued)

and assigned or intended so to be as the partnership reasonably may require.

In witness whereof, the parties hereto have executed these presents the day and year first above written.

/s/ ROY EATON,  
Seller.

NEHI BEVERAGE COMPANY OF HAWAII,  
a Special Partnership,

By /s/ CHARLES P. JOHNSON,  
General Partner.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, before me personally appeared Roy Eaton, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, before me personally appeared Charles P. Johnson, to me personally known, who being by me duly sworn,



## Exhibit No. 7—(Continued)

did say that he is a General Partner of Nehi Beverage Company of Hawaii, a special partnership; that said instrument was signed on behalf of said partnership by authority of all the partners; and that said Charles P. Johnson acknowledged said instrument to be the free act and deed of said partnership.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

Nehi Beverage Company of Hawaii  
Balance Sheet as at September 30, 1942

Assets		
Current:		
Cash in hand and in bank..	\$ 7,485.72	
Accounts receivable .....	\$24,286.26	
Notes receivable .....	41.66	24,327.92
Inventory:		
Finished goods .....	1,860.03	
Bottles .....	7,618.18	
Cases .....	1,717.00	
Supplies .....	5,039.05	16,234.26
Special deposit .....	25.00	\$ 48,072.90
Fixed:		
Automobiles and trucks .....	24,571.13	
Coolers .....	512.43	
Furniture and fixtures .....	1,842.85	
Leasehold improvements .....	684.23	
Machinery and equipment .....	47,182.00	
		74,792.64

## Exhibit No. 7—(Continued)

Less: Allowance for depreciation .....	20,389.50	54,403.14
		<hr/>
Deferred:		
Office supplies .....	314.46	
Prepaid interest .....	215.69	
Prepaid taxes .....	883.64	
Unexpired insurance .....	3,070.72	4,484.51
		<hr/>
Total Assets .....		\$106,960.55
		<hr/> <hr/>
	Liabilities	
Current:		
Accounts payable .....	\$59,106.47	
Notes payable .....	12,072.34	
Accrued interest .....	892.43	
Accrued salaries .....	2,398.03	
Accrued taxes .....	2,491.28	\$ 76,960.55
		<hr/>
	Net Worth	
Capital .....		30,000.00
Total Liabilities and Net Worth .....		\$106,960.55
		<hr/> <hr/>

## EXHIBIT No. 8

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII

## CERTIFICATE OF SPECIAL PARTNERSHIP

The undersigned, being desirous of forming a special partnership, hereby certify in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935, as follows:

## Exhibit No. 8—(Continued)

1. The name under which the partnership is to be conducted is “Nehi Beverage Company of Hawaii”;

2. The general nature of the business intended to be transacted is to buy, sell, import, export, bottle, manufacture, trade and deal in beverages, extracts, syrups and goods, wares and merchandise of every kind and nature, and to carry on the business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers and such other business as may be necessary, suitable or proper to the accomplishment of the purposes or connected with or related thereto as the partners from time to time mutually may agree; and the place or places where the business is to be transacted is at Kona and Hopaka Streets, Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such other place or places in the Territory of Hawaii as the partners from time to time shall determine;

3. The names of the partners and the residence of each are as follows:

Roy Eaton,

General Partner, Honolulu, T. H.;

Charles P. Johnson,

General Partner, Honolulu, T. H.;

Walter L. Prock, Jr.,

General Partner, Honolulu, T. H.;

## Exhibit No. 8—(Continued)

Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton dated September 30, 1942,  
Special Partner, Honolulu, T. H.

4. The amount of capital which the Special Partner has contributed to the special partnership assets is \$15,000.00;

5. The term for which the partnership is to exist commenced on September 30, 1942, and will continue until September 30, 1952, and thereafter from year to year until terminated as provided in that certain Special Partnership Agreement dated September 30, 1942.

In witness whereof the undersigned have caused this certificate to be executed this 29th day of October, 1942.

/s/ ROY EATON,

/s/ CHARLES P. JOHNSON,

/s/ WALTER L. PROCK, JR.,

[Seal] BISHOP TRUST COMPANY,  
LIMITED,

Trustee as Aforesaid.

By /s/ W. A. WHITE,

Its Vice President.

By /s/ E. BENNER, JR.,

Its Asst. Vice Pres.

Exhibit No. 8—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 31st day of October, 1942, before me appeared W. A. White and E. Benner, Jr., to me personally known, who being by me duly sworn, did say that they are Vice President and Assistant Vice President, respectively of Bishop Trust Company limited, a Hawaiian corporation Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said W. A. White and E. Benner, Jr., acknowledged said instrument to be the free act and deed of said corporation as such Trustee.

[Seal] /s/ THEODORA B. TOWNSEND,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, before me personally appeared Roy Eaton, to me known to be the person described in and who executed the fore-

## Exhibit No. 8—(Continued)

going instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, before me personally appeared Charles P. Johnson, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 29th day of October, 1942, before me personally appeared Walter L. Prock, Jr., to me known to be the person described in and who executed the

Exhibit No. 8—(Continued)

foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

Received Nov. 2, 1942, Treasurer's Office, T.H.

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

Roy Eaton, being first duly sworn, on oath doth  
depose and say:

That he is a resident of Honolulu, City and  
County of Honolulu, Territory of Hawaii; that  
Bishop Trust Company, Limited, a Hawaiian cor-  
poration, Trustee under Deed of Trust dated Sep-  
tember 30, 1942, made by Roy Eaton as Settlor, is  
a Special Partner in the partnership of Nehi Bev-  
erage Company of Hawaii; that as Special Partner  
said Bishop Trust Company, Limited, Trustee as

## Exhibit No. 8—(Continued)

aforsaid, actually has paid into the partnership as a capital contribution the sum of \$15,000.00 in lawful money;

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii, 1935.

/s/ ROY EATON.

Subscribed and sworn to before me this 29th day of October, 1942.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of  
The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

Charles P. Johnson, being first duly sworn, on  
oath doth depose and say:



Exhibit No. 8—(Continued)

That he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust dated September 30, 1942, made by Roy Eaton as Settlor, is a Special Partner in the partnership of Nehi Beverage Company of Hawaii; that as Special Partner said Bishop Trust Company, Limited, Trustee as aforesaid, actually has paid into the partnership as a capital contribution the sum of \$15,000.00 in lawful money;

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii, 1935.

/s/ CHARLES P. JOHNSON.

Subscribed and sworn to before me this 29th day of October, 1942.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

## Exhibit No. 8—(Continued)

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of  
The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

Walter L. Prock, Jr., being first duly sworn, on oath doth depose and say:

That he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust dated September 30, 1942, made by Roy Eaton as Settlor, is a Special Partner in the partnership of Nehi Beverage Company of Hawaii; that as Special Partner said Bishop Trust Company, Limited, Trustee as aforesaid, actually has paid into the partnership as a capital contribution the sum of \$15,000.00 in lawful money;

And further affiant sayeth not except that this affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii, 1935.

/s/ WALTER L. PROCK, JR.

Exhibit No. 8—(Continued)

Subscribed and sworn to before me this 29th day of October, 1942.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

W. A. White, being first duly sworn, on oath doth depose and say:

That he is Vice President of Bishop Trust Company, Limited, a Hawaiian corporation, and as such is authorized to make this affidavit on its behalf;

That said Bishop Trust Company, Limited, is the Trustee under the Deed of Trust dated September 30, 1942, made by Roy Eaton as Settlor; that said Bishop Trust Company, Limited, a Hawaiian corporation, as Trustee under said Deed of Trust and

## Exhibit No. 8—(Continued)

not in its individual capacity, is a Special Partner in the partnership of Nehi Beverage Company of Hawaii; that as Special Partner said Bishop Trust Company, Limited, Trustee as aforesaid, actually has paid into the partnership as a capital contribution the sum of \$15,000.00 in lawful money;

And further affiant sayeth not except that this affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ W. A. WHITE.

Subscribed and sworn to before me this 31st day of October, 1942.

[Seal] /s/ THEODORA B. TOWNSEND,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 30, 1945.

## EXHIBIT No. 9

## Deed of Trust—Roy Eaton Trust No. 2

This indenture, dated this 28th day of February, 1943, by and between Roy Eaton, of Honolulu, City and County of Honolulu, Territory of Hawaii, a citizen of the United States of America, hereinafter called the "Settlor," and Bishop Trust Company, Limited (a corporation duly organized and existing under the laws of the Territory of Hawaii and a majority of whose officers and directors are citizens

Exhibit No. 9—(Continued)  
of the United States of America), hereinafter  
called the "Trustee,"

Witnesseth That:

The Settlor, in consideration of the love and affection he bears the beneficiaries and of the acceptance by the Trustee of the trust herein created, does hereby transfer, set over and deliver to the Trustee, its successors in trust and assigns, the sum of fifteen thousand and no/100ths dollars (\$15,000.00);

To have and to hold the same, together with all other property which may hereafter be or become a part of the trust estate hereby created, unto the Trustee, its successors in trust and assigns, in trust nevertheless for the uses and purposes hereinafter stated, that is to say:

(a) The Trustee shall purchase the thirty per cent (30) capital interest of the Special Partner in the partnership known as Nehi Beverage Company of Hawaii, a partnership duly organized and operating under that certain Special Partnership Agreement dated September 30, 1942, paying fifteen thousand and no/100ths dollars (\$15,000.00) therefor, said amount being the fair and reasonable value of said interest duly ascertained as of February 28, 1943, and the Trustee shall become and continue to be a Special Partner therein;

(b) The Trustee shall accumulate all the net income from the said trust estate during the continuance thereof, and except as hereinafter provided, all of said net income shall be added to and

## Exhibit No. 9—(Continued)

become a part of the corpus of the trust estate and be invested and reinvested as a part of said corpus during the existence of this trust;

(c) This trust shall cease and determine when the youngest of the children of the Settlor, who shall continue to survive, shall have attained the age of twenty-five (25) years, or upon the prior death of the last survivor of the said children, and the property comprising the said trust estate, together with all accumulated income thereof, shall at such time vest in and be transferred, conveyed and delivered by the Trustee, absolutely and free and clear of any trust, in equal shares to who are surviving of the children of the Settlor, and the lawful issue of any of said children who shall then be dead (said issue to take per stirpes and not per capita); and in the event that this trust shall have ceased and determined upon the death of the last survivor of the children of the Settlor, and no lawful issue of said children shall be then surviving, then the said property and income shall at such time vest in and be transferred, conveyed and delivered by the Trustee to those persons other than the Settlor, who would be the heirs-at-law of the last survivor of the children of the Settlor under the statutes of descent of the Territory of Hawaii in force and effect at the time of his or her death, the same as if he or she had died intestate at that time; provided, however, that if not terminated prior thereto, the Trustee may determine this trust at any time (but not more than one (1) year)

## Exhibit No. 9—(Continued)

which to the Trustee may seem best after the Trustee shall cease to be a Special Partner in the partnership known as "Nehi Beverage Company of Hawaii," its successors and assigns;

(d) The Trustee shall receive, hold, manage and control the said trust estate, collect the income therefrom and pay all charges incident to trust estates and properly payable by said trust estate therefrom; and the Settlor authorizes the Trustee to retain either permanently or temporarily or for such period of time as it may deem expedient any property conveyed, assigned or delivered to the Trustee by the Settlor of whatever nature; and the Settlor directs that the said Trustee shall not be held liable for any loss resulting to said trust estate by reason of the Trustee's retaining any such property or for any error of judgment in this respect;

(e) The Settlor authorizes and empowers the Trustee to sell at public or private sale, convert, transfer, exchange, mortgage, hypothecate and otherwise deal in or dispose of the whole or any part of the property, real, personal or mixed, which may be from time to time a part of the trust estate, with power to accept any purchase money mortgage or mortgages for any part of the purchase or exchange price; to invest and reinvest the whole or any part of the assets of the said trust estate, and in investing and reinvesting any assets of said trust estate the Trustee may invest in common or preferred stocks of corporations, bonds, notes, debentures, participation or investment certificates and/or in any

## Exhibit No. 9—(Continued)

other property, real or personal, in so far as in its judgment it shall deem such investments advisable, it being the intention of the Settlor, under the foregoing provisions, to grant to the Trustee full power to invest and reinvest money in such investments as it shall deem desirable and suitable investments for trust funds without being restricted to the classes of investments which trustees are permitted by law to make; provided, however, that the Trustee shall obtain the consent of the Settlor to make such investments during his lifetime; and provided further that in the event the Settlor shall die before the termination hereof, the Trustee shall thereafter be restricted in the making of investments of trust funds to the classes of investments which trustees are permitted by law to make, except that in any event the Trustee may, without liability for any losses resulting therefrom, make advances or loans or other or further investments in the partnership known as "Nehi Beverage Company of Hawaii," its successors and assigns; the Settlor authorizes and empowers the Trustee, upon any increase of the capital stock of any corporation in which said trust estate shall own shares, to exercise any preemptive rights to such shares to which said trust estate may be entitled and/or to subscribe for such additional shares as in the judgment of the Trustee shall be an advisable investment; and for this purpose and for other purposes of this trust, the Settlor authorizes and empowers the Trustee to borrow money either from itself or from others and upon



## Exhibit No. 9—(Continued)

such terms and conditions as it may deem appropriate; the Trustee shall have the right and power to vote either directly or by proxy the stock of any corporation that may be a part of said trust estate from time to time at all meetings of stockholders as the Trustee may deem best;

(f) Stock dividends shall be treated as capital of the trust estate and all stock acquired by the Trustee under the exercise of rights to subscribe or the net proceeds realized by the Trustee from the sale of rights to subscribe shall be treated as capital of the trust estate and all other corporate distributions shall be treated as income; provided, however, that where a distribution is made through the reduction of any corporate stock held by the Trustee, or, in the exclusive discretion of the Trustee it appears to be made in or as a result of a partial or complete liquidation or dissolution of the corporation, the Trustee may in its discretion make such apportionment of any such distribution between income and capital as to it may seem just; the Trustee shall have full power and authority to decide and determine in all doubtful cases what property or moneys received by it is capital and what is income; and also in all doubtful cases to decide and determine what expenses and other charges are payable out of income and what out of capital; and also in all doubtful cases to decide and determine what proportion of payments for expenses of or charges against the trust estate are payable from income and what from capital; and all beneficiaries shall be

## Exhibit No. 9—(Continued)

bound by the decision and determination of the Trustee in regard to all such allocations between capital and income; the Trustee shall have authority in and discretion to withhold such amounts of income and/or principal as it may deem necessary to protect itself from any possible liability for taxes and/or costs or expenses in connection with or arising out of possible claims therefor;

(g) The Settlor may transfer, convey and assign to the Trustee any property in addition to that hereinbefore referred to, to be held upon the trust hereby created, and thereafter such additional property shall be and form a part of the trust estate;

(h) The Trustee shall render annual statements of account to the persons who are the beneficiaries of this trust, as hereinabove provided, but the Trustee shall not be required to account in any court unless requested so to do by a beneficiary; provided, however, that the Trustee may whenever it shall deem it advisable file accounts in any court having jurisdiction thereof for approval, the costs of said proceeding to be paid out of the trust estate;

(i) If any person entitled to receive any of the income and/or corpus of the trust estate shall be a minor, the Trustee may pay the share of income and/or corpus to which said minor is entitled to either parent or to the natural or legally appointed guardian of such minor, for the account, benefit or use of such minor, and the receipt of such parent or natural or legally appointed guardian shall be a complete release, discharge and acquittance of the

## Exhibit No. 9—(Continued)

Trustee to account further for any payment or payments so made, and if any beneficiary is a minor, the statements of account may be furnished to either parent or to the natural or legally appointed guardian of such minor beneficiary;

(j) The Trustee shall have the custody and safe-keeping of all moneys and securities belonging to the trust estate which are received or collected by the Trustee. The Trustee may rely upon auditor's reports of the business of the partnership known as "Nehi Beverage Company of Hawaii," and shall not be required to make any independent investigation into its affairs or accounts, and the Trustee shall not be answerable or accountable for any loss or damage resulting from any error of judgment or otherwise except through its own gross negligence or wilful default, nor shall the Trustee be answerable or accountable for any loss or damage resulting from any act consented to by the Settlor or for any loss or damage resulting from any investment in or loan or advance to the partnership known as "Nehi Beverage Company of Hawaii," its successors and assigns;

(k) No beneficiary hereunder shall have the power or authority to anticipate in anywise any of the rents, issues, profits, income, moneys or payments herein provided to be devoted or paid to him or her or any part thereof, nor to alienate, encumber, convey, transfer or dispose of the same or of any interest therein or part thereof, in advance of payment; nor shall the same be involuntarily ali-

## Exhibit No. 9—(Continued)

enated by him or her or be subject to attachment or execution or be levied upon or taken upon any process for any debts which any such beneficiary shall have contracted or in satisfaction of any demands or obligations which he or she shall incur. All payments or distribution of either income and/or principal as hereinabove provided shall be made by the Trustee and subject to the provisions of subparagraph (i) hereinabove shall be valid and effectual only when made to the beneficiary to whom the same shall appertain and belong, and upon his or her individual receipt; provided, however, that when and while the person so entitled to receive such payment shall be without the bounds of the Territory of Hawaii, such payment may be made to any formally appointed agent of such person, but only upon the personal receipt above provided for;

(1) It is hereby declared that this agreement shall be and is hereby made irrevocable by the Settlor and the Settlor reserves the right to amend this instrument only by adding other property to be and become a part of the estate held under the terms hereof, and the right to alter, amend, cancel or revoke any provisions of this instrument, save and except paragraphs (a), (b) and (c) hereof; provided, however, that in no event shall any of the property or the income thereof belonging to the trust estate be paid to or inure to the benefit of the Settlor, and provided further that any amendments made by the Settlor shall be made by instrument in writing and acknowledged and filed with

Exhibit No. 9—(Continued)

the Trustee, and that the alteration, amendment, cancellation or revocation of any provision of this instrument shall be made only with the written consent and approval of the Trustee;

The said Bishop Trust Company, Limited, hereby accepts the within trust and covenants and agrees with the Settlor that it will faithfully discharge and carry out the same.

In witness whereof, the parties hereto have executed these presents the day and year first above written.

/s/ ROY EATON,  
Settlor.

[Seal] BISHOP TRUST COMPANY,  
LIMITED,

By /s/ W. A. WHITE,  
Its Vice President.

By /s/ E. BENNER, JR.,  
Its Asst. Vice Pres., Trustee.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 22nd day of April, 1943, before me personally appeared Roy Eaton, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

## Exhibit No. 9—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 24th day of April, 1943, before me appeared W. A. White and E. Benner, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and Asst. Vice Pres., respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said W. A. White and E. Benner, Jr., acknowledged said instrument to be the free act and deed of said corporation.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

## EXHIBIT No. 10

## Assignment

Assignment of Partnership Interest in Nehi Beverage Company of Hawaii—Roy Eaton Trust No. 2

This indenture, made this 28th day of February, 1943, by and between Bishop Trust Company, Limited, a Hawaiian corporation, a majority of whose officers and directors are citizens of the United

## Exhibit No. 10—(Continued)

States of America, Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, hereinafter called the "assignor," and Bishop Trust Company, Limited, a Hawaiian corporation, a majority of whose officers and directors are citizens of the United States of America as aforesaid, Trustee under Deed of Trust of Roy Eaton, dated February 28, 1943, hereinafter called the "Assignee,"

## Witnesseth That:

The Assignor, for and in consideration of the sum of fifteen thousand and no/100ths dollars (\$15,000.00), lawful money of the United States of America, and other good and valuable consideration to it paid, the receipt of which is hereby acknowledged, does hereby assign, transfer, set over, and deliver unto the Assignee, its successors and assigns in trust, all of its right, title and interest in and to its thirty (30) per cent capital interest of the special partnership known as "Nehi Beverage Company of Hawaii," a partnership duly organized and operating under that certain Special Partnership Agreement dated September 30, 1942, provided, however, that nothing herein contained shall constitute an assignment of any of its right to the advance account covering the share of the Assignor in the undivided profits of said special partnership to February 28, 1943.

To have and to hold the same unto the Assignee, its successors and assigns in trust, absolutely,

And Roy Eaton, Charles P. Johnson, and Walter





Exhibit No. 10—(Continued)

going instrument and acknowledged that they executed the same as their free act and deed.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 24th day of April, 1943, before me appeared W. A. White and E. Benner, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and the Assistant Vice President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation as Trustee aforesaid by authority of its Board of Directors and said W. A. White and E. Benner, Jr., acknowledged said instrument to be the free act and deed of said corporation as such Trustee.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

## EXHIBIT No. 11

Amendment of Special Partnership Agreement  
(Roy Eaton Trust No. 2)

This indenture, made this 28th day of February, 1943, by and between Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., all of whom are citizens of the United States of America, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter referred to as "General Partners," and Bishop Trust Company, Limited, a Hawaiian corporation, and a majority of whose officers and directors are citizens of the United States of America, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, hereinafter referred to as the "Special Partner,"

## Witnesseth That:

Whereas the General Partners and Bishop Trust Company, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, as Special Partner, have formed with each other a Special Partnership by Special Partnership Agreement dated September 30, 1942; and

Whereas the interest of said Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, has been purchased by Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, dated February 28, 1943, and the General Partners have consented to said assignment; and

Whereas the parties hereto deem it necessary to

(Exhibit No. 11—(Continued))

alter certain provisions in accordance with the provisions of Paragraph 18, Pages 14 and 15, in said Special Partnership Agreement contained,

Now, Therefore, This Indenture Witnesseth:

1. That said Special Partnership Agreement is hereby altered by substituting "Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, dated February 28, 1943," as Special Partner in the place and stead of "Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942."

2. That Paragraph 4 of said Special Partnership Agreement is hereby altered to read as follows:

"Compensation of General Partners and Division of Profits. From time to time, and as the General Partners may agree, the General Partners actively engaged in the business of the partnership shall receive, as compensation for services rendered to the partnership, a salary chargeable for purposes of computing net profits hereunder, as an expense of the business, in such amount as the General Partners may from time to time agree upon, constituting the reasonable value of the services rendered to the partnership. All of the remaining net profits of the partnership shall be divided for each annual period in proportion to the above stated interest of each of the partners in the original capital of the partnership, and all losses of the partnership for each annual period shall be divided among

(Exhibit No. 11—(Continued))

the partners in the same manner as herein provided for the division of profits, provided, however, that General Partners Charles P. Johnson and/or Walter L. Prock, Jr., shall only be entitled to such amount of the net profits of the business during any period of time in which the business of the partnership is not the principal activity of said partner, as is not in excess of 12% per annum of the amount of said General Partner's capital interest, and the remaining net profits of the partnership shall be divided in proportion to the above stated interest of each of the other partners in the original capital of the partnership. Profits and losses that may arise out of or occur in the prosecution of the said partnership operations, shall be credited or charged at the close of each year on the books of the partnership to the account of each partner in proportion to the account of each partner, but none of the said profits or capital shall be withdrawn by any partner (save and except that sufficient thereof may be withdrawn by the Special Partner to pay all taxes, commissions, fees, and expenses payable on the profits of said Special Partner or payable on account of the investment by the Special Partner of trust assets in said partnership, and by the General Partners to pay all taxes payable on the profits of said General Partners) until the capital of the partnership shall exceed \$100,000.00, and then only to the extent of each partner's share of such excess."

In witness whereof, the parties hereto have

(Exhibit No. 11—(Continued))

executed these presents as of the day and year first above written.

/s/ ROY EATON,  
/s/ CHARLES P. JOHNSON,  
/s/ WALTER L. PROCK, JR.,  
General Partners.

[Seal] BISHOP TRUST COMPANY,  
LIMITED,

Trustee Under Deed of Trust of Roy Eaton, Dated  
February 28, 1943, and Not Individually.

By /s/ W. A. WHITE,  
Its Vice President.

By /s/ E. BENNER, JR.,  
Its Asst. Vice Pres.,  
Special Partner.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 22nd day of April, 1943, personally appeared before me Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., known to me to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

(Exhibit No. 11—(Continued))

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 24th day of April, 1943, before me appeared W. A. White and E. Benner, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and the Assistant Vice President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton, dated February 28, 1943, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation as Trustee aforesaid by authority of its Board of Directors and said W. A. White and E. Benner, Jr, acknowledged said instrument to be the free act and deed of said corporation as such Trustee.

/s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

EXHIBIT No. 12

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII

CERTIFICATE OF CHANGE OF SPECIAL  
PARTNERSHIP

The undersigned, a Special Partnership, hereby certify in accordance with the provisions of Chapter 225, Revised Laws of Hawaii, 1935, as follows:

1. The name under which the partnership is to be conducted is "Nehi Beverage Company of Hawaii";

2. The general nature of the business intended to be transacted is to buy, sell, import, export, bottle, manufacture, trade and deal in beverages, extracts, syrups and goods, wares and merchandise of every kind and nature, and to carry on the business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers and such other business as may be necessary, suitable or proper to the accomplishment of the purposes or connected with or related thereto as the partners from time to time mutually may agree; and the place or places where the business is to be transacted is at Kona and Hopaka Streets, Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such

## Exhibit No. 12—(Continued)

other place or places in the Territory of Hawaii as the partners from time to time shall determine;

3. The names of the partners and the residence of each are as follows:

## General Partners

Roy Eaton,

2112 Mott-Smith Dr., Honolulu, T. H.

Charles P. Johnson,

Mariposa Road, Honolulu, T. H.

Walter L. Prock, Jr.,

2373 Hoomaha Way, Honolulu, T. H.

## Special Partner

Bishop Trust Company, Limited in its capacity as Trustee under Deed of Trust of Roy Eaton, dated February 28, 1943, and not in its individual capacity.

Bishop Trust Building, corner of Bishop and King Streets, Honolulu, T. H.

Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, dated September 30, 1942, has withdrawn from the Special Partnership;

4. The amount of capital which the Special Partner has contributed to the partnership assets is \$15,000.00;

5. The change in the Special Partnership became effective on February 28, 1943. The Special Partnership will continue until September 30, 1952,



Exhibit No. 12—(Continued)

and thereafter from year to year until terminated as provided in that certain Special Partnership Agreement dated September 30, 1942.

In witness whereof, the undersigned have caused this certificate to be executed this 22nd day of April, 1943.

/s/ ROY EATON,

/s/ CHARLES P. JOHNSON,

/s/ WALTER L. PROCK, JR.

[Seal]

BISHOP TRUST COMPANY,  
LIMITED,

Trustee as Aforesaid.

By /s/ W. A. WHITE,

Its Vice President.

By /s/ E. BENNER, JR.,

Its Asst. Vice Pres.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 22nd day of April, 1943, before me personally appeared Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

## Exhibit No. 12—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 24th day of April, 1943, before me appeared W. A. White and E. Benner, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assist. Vice-Pres., respectively of Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton, dated February 28, 1943, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said W. A. White and E. Benner, Jr., acknowledged said instrument to be the free act and deed of said corporation as such Trustee.

[Seal]      /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

Received April 26, 1943, Treasurer's Office, T. H.

Exhibit No. 12—(Continued)

In the Office of the Treasurer of the Territory  
of Hawaii

In the Matter of:

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII.

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

Roy Eaton, being first duly sworn, on oath doth  
depose and say:

That he is a resident of Honolulu, City and  
County of Honolulu, Territory of Hawaii; that  
Bishop Trust Company, Limited, a Hawaiian cor-  
poration, Trustee under Deed of Trust dated Feb-  
ruary 28, 1943, made by Roy Eaton as Settlor, is a  
Special Partner in the partnership of Nehi Bever-  
age Company of Hawaii; that as Special Partner  
said Bishop Trust Company, Limited, Trustee as  
aforesaid, actually has paid into the partnership as  
a capital contribution the sum of \$15,000.00 in law-  
ful money;

And further affiant sayeth not except that this  
Affidavit is made in accordance with the require-  
ments of the provisions of Section 6875, Revised  
Laws of Hawaii, 1935.

/s/ ROY EATON.

## Exhibit No. 12—(Continued)

Subscribed and sworn to before me this 22nd day of April, 1943.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of:

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII.

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

Charles P. Johnson, being first duly sworn, on oath doth depose and say:

That he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust dated February 28, 1943, made by Roy Eaton as Settlor, is a Special Partner in the partnership of Nehi Beverage Company of Hawaii; that as Special Partner said Bishop Trust Company, Limited, Trustee as aforesaid, actually has paid into the partnership as a

Exhibit No. 12—(Continued)

capital contribution the sum of \$15,000.00 in lawful money;

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii, 1935.

/s/ CHARLES P. JOHNSON.

Subscribed and sworn to before me this 22nd day of April, 1943.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of:

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII.

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

Walter L. Prock, Jr., being first duly sworn, on  
oath doth depose and say:

## Exhibit No. 12—(Continued)

That he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust dated February 28, 1943, made by Roy Eaton as Settlor, is a Special Partner in the partnership of Nehi Beverage Company of Hawaii; that as Special Partner said Bishop Trust Company, Limited, Trustee as aforesaid, actually has paid into the partnership as a capital contribution the sum of \$15,000.00 in lawful money;

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii, 1935.

/s/ WALTER L. PROCK, JR.

Subscribed and sworn to before me this 22nd day of April, 1943.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

Exhibit No. 12—(Continued)

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of:

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII.

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII, 1935

Territory of Hawaii,  
City and County of Honolulu—ss.

W. A. White, being first duly sworn, on oath doth  
depose and say:

That he is Vice President of Bishop Trust Com-  
pany, Limited, a Hawaiian corporation, and as such  
is authorized to make this Affidavit on its behalf;

That said Bishop Trust Company, Limited, is the  
Trustee under the Deed of Trust dated February  
28, 1943, made by Roy Eaton as Settlor; that said  
Bishop Trust Company, Limited, a Hawaiian cor-  
poration, as Trustee under said Deed of Trust and  
not in its individual capacity, is a Special Partner  
in the partnership of Nehi Beverage Company of  
Hawaii; that as Special Partner said Bishop Trust  
Company, Limited, Trustee as aforesaid, actually  
has paid into the partnership as a capital contribu-  
tion the sum of \$15,000.00 in lawful money;

And further affiant sayeth not except that this  
Affidavit is made in accordance with the require-

## Exhibit No. 12—(Continued)

ments of the provisions of Section 6875, Revised Laws of Hawaii, 1935.

/s/ W. A. WHITE.

Subscribed and sworn to before me this 24th day of April, 1943.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1945.

## EXHIBIT No. 13

## Bill of Sale

This Indenture made as at the close of business on June 30, 1946, by and between Charles P. Johnson of Honolulu, City and County of Honolulu, Territory of Hawaii, and Walter L. Prock, Jr., of Honolulu aforesaid, hereinafter called the "Sellers," and Roy Eaton of Honolulu aforesaid, hereinafter called the "Purchaser,"

## Witnesseth That:

Whereas the Sellers and the Purchaser are general partners in that certain special partnership registered to do and doing business in the Territory of Hawaii under the name of Nehi Beverage Company of Hawaii, which said partnership consists of the parties hereto as general partners, and Bishop



## Exhibit No. 13—(Continued)

Trust Company, Limited, as Trustee under Deed of Trust dated February 28, 1943, as special partner; and

Whereas, in accordance with the articles of co-partnership the Sellers desire to withdraw as partners from said partnership, and have agreed to sell to the Purchaser, and the Purchaser has agreed to buy from the Sellers their respective interests in said partnership,

Now, Therefore, the Sellers for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby assign, transfer, set over, bargain, sell, grant and deliver unto the Purchaser, his heirs and assigns absolutely;

All and singular the rights, property, assets and privileges owned by the Sellers and constituting their respective interests in the special partnership known as Nehi Beverage Company of Hawaii, a partnership duly organized and operating under that certain special partnership agreement dated September 30, 1942, said interests being as shown on the balance sheet prepared by Cameron & Johnstone, Certified Public Accountants, auditors of the partnership, dated as of the close of business on June 30, 1946, copy of which is on file in the office of the partnership and which is incorporated herein and by reference made part hereof for all purposes, including particularly, but not in any wise limiting the generality of the foregoing, all their right and

## Exhibit No. 13—(Continued)

interest in all chattels, leaseholds, improvements, machines and equipment, all furniture, office equipment, office machinery, appliances and devices, all files, records, books, accounts, inventories, together with all other personal property, goods and chattels, of every kind and description, and wheresoever situate; all good will, trade names, trade connections, licenses, and all contracts and agreements, including any and all rights under policies of indemnity, fidelity or other bonds or insurance of any and every kind, or cash on hand or in bank or banks, bonds, mortgages, conditional sales agreements, accounts and bills receivable, promissory notes, claims, demands, equities and choses in action, and all other property and assets, tangible and intangible, of every kind or nature owned or claimed by the Sellers or either of them, and used in the business conducted by said partnership.

To Have and to Hold the same, together with all improvements, rights, easements, privileges, rents, issues, profits and appurtenances to the same or any part thereof belonging or appertaining to or held and enjoyed therewith, unto the Purchaser, his heirs, executors, administrators and assigns, absolutely and forever or in fee simple as the case may be;

And, for the consideration aforesaid, the Sellers do severally for themselves and their respective heirs, executors and administrators, hereby irrevocably appoint the Purchaser, his heirs and assigns, the true and lawful attorney for them and

## Exhibit No. 13—(Continued)

each of them, in their respective names, places and steads to ask, demand, sue for and recover any and all assets and other property conveyed and transferred hereby or intended so to be, and the rights and benefits therefor, with full power to make, execute and deliver for and on their behalf, and on behalf of each of them, all such certificates, receipts, bills of sale, and such other instruments as may be necessary or proper for the better and more effectual vesting and confirming of all right and interest, property, claims and demands hereinabove conveyed and assigned or intended so to be as the Purchaser may reasonably require or as the said partnership may reasonably require, for the purpose of effectuating the withdrawal of said Sellers from said partnership;

And the Purchaser does hereby covenant and agree that he will indemnify and save harmless the Sellers and each of them from any liability of any kind or nature arising out of any obligation, indebtedness or claim however arising and payable by said partnership whether now or hereafter shown on the books of account of said partnership;

And the parties hereto do mutually agree that the account prepared by Cameron & Johnstone, Certified Public Accountants, for the partnership for the period ending June 30, 1946, shall be and it is hereby accepted and approved as an Account Stated, and do hereby mutually release each other from all further liability, claim or obligation of any kind except as herein provided and except as pro-

## Exhibit No. 13—(Continued)

vided in the promisory notes delivered by the Purchaser to the Sellers concurrently herewith, arising out of or in connection with the formation, operation or modification of said partnership or in any manner connected therewith.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written.

/s/ CHARLES P. JOHNSON,  
/s/ WALTER L. PROCK, JR.,  
Sellers.

/s/ ROY EATON,  
Purchaser.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 10th day of September, 1946, before me personally appeared Charles P. Johnson to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ MARY B. GARDNER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1948.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 10th day of September, 1946, before me personally appeared Walter L. Prock, Jr., to me known to be the person described in and who exe-

Exhibit No. 13—(Continued)

cutted the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ MARY B. GARDNER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1948.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 11th day of September, 1946, before me personally appeared Roy Eaton to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

EXHIBIT No. 14

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of:

The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII.

CERTIFICATE OF CHANGE OF  
SPECIAL PARTNERSHIP

The undersigned, a Special Partnership, hereby certify in accordance with the provisions of Chap-

## Exhibit No. 14—(Continued)

ter 225, Revised Laws of Hawaii, 1935, as amended, as follows:

1. The name under which the partnership is now and will be conducted is "Nehi Beverage Company of Hawaii";

2. The general nature of the business transacted is to buy, sell, import, export, bottle, manufacture, trade and deal in beverages, extracts, syrups and goods, wares and merchandise of every kind and nature and to carry on the business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers and such other business as may be necessary, suitable or proper to the accomplishment of the purposes or connected with or related thereto as the partners from time to time mutually may agree; and the place or places where the business is to be transacted is at Kona and Hopaka Streets, Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such other place or places in the Territory of Hawaii as the partners from time to time shall determine;

3. The names of the parties and the addresses of each are as follows:

General Partner

ROY EATON,

140 Dowsett Avenue,

Honolulu, T. H.

Exhibit No. 14—(Continued)

Special Partner

BISHOP TRUST COMPANY, LIMITED, Trustee,  
King & Bishop Streets  
Honolulu, T. H.

That a change has occurred in said partnership in that Charles P. Johnson and Walter L. Prock, Jr., general partners, have withdrawn as partners from the special partnership and their interests have been assigned to Roy Eaton who will continue as a general partner;

4. The amount of capital which the special partner has contributed to the partnership assets is Fifteen Thousand Dollars (\$15,000.00), as appears by affidavit heretofore filed in the Office of the Treasurer, Territory of Hawaii;

5. The change in the special partnership will become effective on the filing of this certificate, but said change and the assignments referred to in Paragraph 3 hereof have been dated as of June 30, 1946; the special partnership will continue until September 30, 1952, and thereafter from year to year until terminated, as provided in that certain special partnership agreement dated September 30, 1942.

In Witness Whereof the undersigned have caused

Exhibit No. 14—(Continued)

this certificate to be executed this 11th day of September, 1946.

/s/ ROY EATON,

/s/ CHARLES P. JOHNSON,

/s/ WALTER L. PROCK, JR.

[Seal] BISHOP TRUST COMPANY,  
LIMITED,

Trustee as Aforesaid.

By /s/ E. BENNER, JR.,

Its Vice-Pres.

By /s/ T. G. SINGLEHURST,

Its Treasurer.

Territory of Hawaii,

City and County of Honolulu—ss.

On this 11th day of September, 1946, before me personally appeared Roy Eaton, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

Territory of Hawaii,

City and County of Honolulu—ss.

On this 10th day of September, 1946, before me personally appeared Charles P. Johnson, to me



Exhibit No. 14—(Continued)

known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]     /s/ MARY B. GARDNER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1948.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 10th day of September, 1946, before me personally appeared Walter L. Prock, Jr., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]     /s/ MARY B. GARDNER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1948.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 11th day of September, 1946, before me appeared E. Benner, Jr., and T. G. Singlehurst to me personally known, who, being by me duly sworn, did say that they are the Vice President and Treasurer, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton, dated February 28, 1943,

## Exhibit No. 14—(Continued)

the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said E. Benner, Jr., and T. G. Singlehurst acknowledged said instrument to be the free act and deed of said corporation as such Trustee.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

## EXHIBIT No. 15

Honolulu, T. H.  
October 11, 1946.

Mr. Roy Eaton and  
Bishop Trust Company, Limited  
Trustee under Deed of Trust of  
Roy Eaton dated February 28, 1943,  
Copartners Doing Business as  
Nehi Beverage Company of Hawaii,  
Kona and Hopaka Streets  
Honolulu, T. H.

Gentlemen:

This will confirm our agreement made for and on behalf of a corporation to be organized as herein provided (herein called the "purchasing corporation") to purchase from you all of the assets, prop-

## Exhibit No. 15—(Continued)

erty and business known as Nehi Beverage Company of Hawaii under the following terms and conditions:

(1) The property sold shall include all machinery, equipment, leaseholds, bottles and cases, supplies, furniture, motor vehicles, accounts receivable, and all other property of every kind and nature used in your business, as shown on the books of said partnership (including the franchises, trade names and good will, which are referred to hereinbelow).

(2) The purchase price for all assets (other than the franchises, trade names and good will) shall be equal to the adjusted net book value of the assets as shown on the audit statement to be prepared as of September 30, 1946, by Messrs. Cameron & Johnstone, certified public accountants. It is our agreement that sufficient cash will be withdrawn from the partnership assets prior to the effective date of the sale so that the purchase price to the purchasing corporation for the physical assets (after withdrawal of cash computed as herein provided) shall be \$100,000.00; and the purchasing corporation shall assume and promptly pay and discharge all obligations and indebtedness of the partnership as shown in the books of account of said partnership.

(3) It is understood that the purchasing corporation and the sellers will adjust the net book value of the assets either upward or downward in the event the auditors shall determine that the net book

## Exhibit No. 15—(Continued)

value of the assets sold require an adjustment by reason of items or facts not now recorded in the books of the partnership; provided, however, that all tax claims, tax refunds, tax liabilities for business transacted prior to October 1, 1946, shall be for the sole account of the sellers, and the assets shall not be deemed to include a refund from Nehi Beverage Corporation, of advertising expense incurred prior to September 30, 1946, nor include other accruals arising out of the operation of the business prior to September 30, 1946, not recorded on the books of the partnership. The purchasing corporation will accept the physical assets in the condition they are in upon the date of delivery, without representations or warranties (other than warranty of title), a full examination having been made on behalf of the purchasing corporation.

(4) It is our understanding that the three franchises together with the good will and trade names "Nehi Beverages," "Royal Crown Cola" and "Par-T-Pak" have been issued by Nehi Corporation of Columbus, Georgia, and are held in the name of Roy Eaton, said franchises being exclusive franchises covering the Territory of Hawaii.

We have agreed to purchase said franchises (and the good will and trade names connected therewith) for an additional amount of \$135,000.00 payable by the purchasing corporation as hereinbelow provided.

(5) The sale shall be effective as of October 1, 1946, all accruals and all expenses and obligations

## Exhibit No. 15—(Continued)

from and after said date to be for the account of the purchasing corporation.

(6) **Terms of Payment:** The purchasing corporation agrees to pay for the physical assets purchased, as follows:

Upon execution of a bill of sale to the purchasing corporation covering all assets, other than franchises, trade names and good will, the purchasing corporation shall pay the sum of \$65,000.00 in cash and to deliver promissory notes duly executed by the purchasing corporation payable severally to Roy Eaton and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, in installments in the aggregate principal amount of \$35,000.00, payable as shown on the schedule attached hereto and made part hereof for every purpose.

The purchasing corporation agrees to pay for the franchises (including good will and trade names) as follows:

Upon written confirmation that the Nehi Corporation of Columbus, Georgia, will issue the three franchises above referred to into the name of H. C. Lundburg, the purchasing corporation will pay \$5,000.00 in cash and will deliver promissory notes duly executed by the purchasing corporation payable severally to Roy Eaton and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, in installments in the aggregate principal amount of \$130,000.00

## Exhibit No. 15—(Continued)

payable as shown on schedule attached hereto and made part hereof for every purpose.

(7) We undertake and agree upon approval hereof to cause to be formed a Hawaiian corporation to be known as Nehi Beverage Company of Hawaii, Ltd., or having a substantially similar name, said corporation to have a capital of not less than \$115,000.00 fully paid in; that the purchase herein agreed to shall be made by said corporation; that the promissory notes above referred to shall be executed by said Nehi Beverage Company of Hawaii, Ltd., but without endorsement or guarantee by the undersigned; that upon the execution of the promissory notes all of the issued and outstanding stock of said corporation shall be pledged to secure the repayment of said promissory notes, but with no power in the pledgees to vote said stock except upon default; that the purchasing corporation will covenant and agree at all times to abide by the terms and conditions of the franchises and to keep said franchises in full force and effect; that the purchasing corporation will not engage in any business without the written consent of the Nehi Corporation, except the businesses necessary to maintain and operate the said franchises; that the purchasing corporation shall have the option at any time of paying the promissory notes in full; that in the event that the purchasing corporation shall default in any of the terms or conditions hereof, or in making the installment payments when due, then the

## Exhibit No. 15—(Continued)

entire deferred balance on the promissory notes shall be due and payable, together with costs of collection and reasonable attorney's fees.

(8) The sellers agree to make, execute and deliver all such assignments, bills of sale and instruments of conveyance as may be necessary to carry the foregoing agreement into effect and that the transfer and delivery shall be effected within thirty (30) days from the date hereof, or within ten (10) days after completion of the audit, whichever date shall be later, it being understood, however, that the transaction shall be completed as soon as reasonably practicable.

(9) We have deposited this day \$10,000.00 with your attorneys, Smith, Wild, Beebe & Cades, to be held as security for our undertakings hereunder, said deposit to be returned to the undersigned in the event that the Sellers shall not perform or be able to perform their agreement as hereinbefore set forth, or if Nehi Corporation (Georgia) shall fail or refuse to issue said three (3) franchises to H. C. Lundburg, or in the event that the purchasing corporation shall make the initial payments and execute promissory notes as required hereinabove. Time is of the essence of this contract and in the event that the undersigned or the purchasing corporation shall fail or neglect to carry out their undertakings in accordance with the terms hereof, Smith, Wild, Beebe & Cades are authorized to pay said \$10,000.00 to the Sellers as liquidated dam-

## Exhibit No. 15—(Continued)

ages and not as a penalty and the Sellers shall have no further obligation hereunder of any kind, or in the alternative, to file a bill of interpleader in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, and deposit said sum of \$10,000.00, less any expenses incurred, with the Clerk of said Court, and upon so doing, Smith, Wild, Beebe & Cades shall be released of and from all further obligations with respect thereto, and all questions of damages shall be determined by said court.

(10) It is agreed that the promissory notes hereinbefore referred to shall not bear interest.

(11) It is further agreed:

A. That the cost of auditing hereinbefore referred to and all legal expenses incurred by the Sellers with respect to the foregoing agreement and the preparation and execution of the bill of sale, promissory notes and collateral pledge agreements hereinbefore referred to shall be paid by the sellers, and that legal expenses incurred by the Purchasers with respect to the foregoing agreement or in the preparation and execution of documents which may be necessary to carry out their part of said agreement shall be paid by the Purchasers;

B. That if prior to the date when legal title or possession of the subject matter of the foregoing contract shall have been transferred, all or a material part thereof shall be destroyed without fault of the Purchasers, said agreement shall forthwith terminate and the Purchasers shall be entitled to recover the said sum of \$10,000.00 which has been



Exhibit No. 15—(Continued)

so deposited with the firm of Smith, Wild, Beebe & Cades.

(12) Roy Eaton agrees that without additional compensation, he will for a period of thirty (30) days from and after the date of execution of the bill of sale above referred to devote all of his time and attention during usual business hours in assisting the Purchasers with respect to the proper management and conduct of said business.

Very truly yours,

/s/ H. C. LUNDBURG,

/s/ K. J. LUKE,

/s/ Y. O. LEONG,

Purchasers.

The foregoing agreement is hereby accepted and approved.

/s/ ROY EATON.

BISHOP TRUST COMPANY,  
LIMITED,

Trustee as Aforesaid,

By /s/ W. A. WHITE,

Its Vice Pres.

By /s/ G. W. FISHER,

Its Vice Pres., Co-Partners Doing Business as Nehi Beverage Company of Hawaii.

## Exhibit No. 15—(Continued)

Schedule of Deferred Payments  
for Physical Assets

Date of Deferred Payment	To—	To—
	Roy Eaton	Bishop Trust Company, Limited, Trustee
Jan. 2, 1947 .....	\$21,000.00	\$ 9,000.00
Oct. 1, 1947 .....	3,500.00	1,500.00
	<hr/>	<hr/>
	\$24,500.00	\$10,500.00

Schedule of Deferred Payments for Franchises  
(Including Trade Names and Good Will)

Date of Deferred Payment	To—	To—
	Roy Eaton	Bishop Trust Company, Limited, Trustee
Oct. 1, 1947 .....	\$ 4,900.00	\$ 2,100.00
Apr. 1, 1948 .....	4,200.00	1,800.00
Oct. 1, 1948 .....	4,200.00	1,800.00
Apr. 1, 1949 .....	4,200.00	1,800.00
Oct. 1, 1949 .....	4,200.00	1,800.00
Apr. 1, 1950 .....	4,200.00	1,800.00
Oct. 1, 1950 .....	4,200.00	1,800.00
Apr. 1, 1951 .....	4,200.00	1,800.00
Oct. 1, 1951 .....	4,200.00	1,800.00
Apr. 1, 1952 .....	4,200.00	1,800.00
Oct. 1, 1952 .....	4,200.00	1,800.00
Apr. 1, 1953 .....	4,200.00	1,800.00
Oct. 1, 1953 .....	4,200.00	1,800.00
Apr. 1, 1954 .....	4,200.00	1,800.00
Oct. 1, 1954 .....	4,200.00	1,800.00
Apr. 1, 1955 .....	4,200.00	1,800.00
Oct. 1, 1955 .....	4,200.00	1,800.00
Apr. 1, 1956 .....	4,200.00	1,800.00
Oct. 1, 1956 .....	4,200.00	1,800.00
Apr. 1, 1957 .....	4,200.00	1,800.00
Oct. 1, 1957 .....	4,200.00	1,800.00
Apr. 1, 1958 .....	2,100.00	900.00
	<hr/>	<hr/>
	\$91,000.00	\$39,000.00

## EXHIBIT No. 16

## Bill of Sale

This Indenture made as of the opening of business on the 1st day of October, 1946, by and between Nehi Beverage Company of Hawaii, a registered special partnership (composed of Roy Eaton, general partner, and Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust made by Roy Eaton, Settlor, dated February 28, 1943, special partner), hereinafter called the "Seller," and Nehi Beverage Company of Hawaii, Ltd., a corporation organized under the laws of the Territory of Hawaii, hereinafter called the "Purchaser,"

## Witnesseth That:

Whereas the Seller is the owner of that certain business conducted by and under the name of "Nehi Beverage Company of Hawaii"; and

Whereas the general partner is the owner and holder of three franchises together with the trade names and good will connected with "Nehi Beverage," "Royal Crown Cola" and "Par-T-Pak" which said franchises have been issued by Nehi Corporation of Columbus, Georgia, and which said franchises are exclusive franchises covering the Territory of Hawaii, and are all held by said general partner for the account and benefit of said special partnership; and

Whereas concurrently herewith the general partner, for valuable consideration, has caused the said franchises (together with the attendant good will

## Exhibit No. 16—(Continued)

and trade names) to be issued into the name of H. C. Lundburg and the said Seller has agreed to make, execute and deliver all such assignments, bills of sale and instruments of conveyance as may be necessary to transfer and deliver unto the Purchaser all of the assets and properties hereinafter described;

Now, Therefore, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, the Seller does hereby assign, transfer, set over, deliver and confirm unto the Purchaser, its successors and assigns:

All and singular the rights, property, assets and privileges owned by the Seller and used in the business carried on by it referred to and identified as assets on "Exhibit A Nehi Beverage Company of Hawaii Balance Sheet, September 30, 1946" prepared by Messrs. Cameron & Johnstone, Certified Public Accountants, which is hereto attached and made part hereof for every purpose, including particularly, but not in any wise limiting the generality of the foregoing, all chattels, leaseholds, improvements, machines, and equipment, all furniture, office equipment, office machinery, appliances and devices, all files, records, accounts and inventories, together with all other personal property, goods and chattels of every kind and description in said Exhibit A referred to, wheresoever situate, all contracts and agreements, including any and all rights under policies of indemnity, fidelity or any other

## Exhibit No. 16—(Continued)

bonds and insurance of any and every kind, all cash on hand or in bank or banks (excluding, however, the sum of \$25,513.69 not transferred hereby), conditional sale agreements, bills receivable, promissory notes, claims, demands, equities and choses in action.

To Have and to Hold the same, together with all improvements, rights, easements, privileges, rents, issues and profits, and appurtenances to the same or any part thereof belonging or appertaining or held and enjoyed therewith, unto the Purchaser, its successors and assigns, absolutely and forever.

And the Purchaser does hereby covenant and agree that it will and by these presents does assume all of the liabilities, obligations and indebtedness of the Seller arising out of or in connection with the operation of said business prior to September 30, 1946, and identified as liabilities on said Exhibit A, together with all liabilities, obligations, and indebtedness arising out of or in connection with the operation of the business after said date, and does covenant and agree to pay and discharge the same as fully and completely as though said liabilities, obligations and indebtedness had been incurred directly by said Purchaser, and to indemnify and hold harmless the said Seller from all liability, expense and obligation upon the same arising in connection therewith.

And for the consideration aforesaid, the Seller does hereby covenant with said Purchaser that the Seller is the lawful owner of all of the above-described property and has good right to sell and

## Exhibit No. 16—(Continued)

assign the same as aforesaid and that the Seller will and its successors and assigns shall warrant and defend unto the Purchaser, its successors and assigns, forever, the above-described property against the claims and demands of all persons claiming by, through or under said Seller, provided, however, that said Bishop Trust Company, Limited, as Trustee aforesaid, shall not be liable under this covenant beyond its present interest in and the proceeds from the sale of the assets and property of said special partnership.

And for the consideration aforesaid, the Seller, for itself and its successors and assigns, does hereby irrevocably appoint the Purchaser, its successors and assigns, its true and lawful attorney, in its name, place and stead to ask, demand, sue for and recover any and all moneys, assets or other property conveyed and transferred hereby or intended so to be, and the rights and benefits therefor, and does further covenant that it, the Seller, will at any time at the request of the Purchaser make, do, execute and deliver all such receipts, powers of attorney, and further instrument or instruments for the better and more effectual vesting and confirming of all right and interest, property claims and demands hereinabove conveyed and assigned or intended so to be as the Purchaser reasonably may require.

And the Purchaser and the Seller mutually agree that all tax claims, tax refunds, tax liabilities for business transacted prior to October 1, 1946, shall be the sole property and for the sole account of the

Exhibit No. 16—(Continued)

Seller and that the transfer hereby made shall not be deemed to include refund from Nehi Beverage Corporation of advertising expense incurred prior to September 30, 1946, nor include other accruals arising out of the operation of the business prior to September 30, 1946, and not referred to or included on said Exhibit A.

In Witness Whereof the parties hereto have executed these presents as of the day and year first above written.

/s/ ROY EATON,  
General Partner.

[Seal] BISHOP TRUST COMPANY,  
LIMITED,  
Trustee as Aforesaid.

By /s/ E. BENNER, JR.,  
Its Vice Pres.

By /s/ G. H. VICARS, JR.,  
Its Asst. Vice Pres.,  
Special Partner; Seller.

NEHI BEVERAGE COMPANY  
OF HAWAII, LTD.,

By /s/ H. C. LUNDBURG,  
Its President.

By /s/ KAN JUNG LUKE,  
Its Secretary-Treasurer,  
Purchaser.

## Exhibit No. 16—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 7th day of November, 1946, before me personally appeared Roy Eaton, to me known to be the person described in and who executed the foregoing instrument and duly acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 7th day of November, 1946, before me appeared E. Benner, Jr., and G. H. Vicars, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Vice President, respectively, of Bishop Trust Company, Limited, Trustee under Deed of Trust made by Roy Eaton, Settlor, dated February 28, 1943, a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said E. Benner, Jr., and G. H. Vicars, Jr., acknowl-



Exhibit No. 16—(Continued)

edged said instrument to be the free act and deed of said corporation as Trustee aforesaid.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 7th day of November, 1946, before me appeared H. C. Lundburg and Kan Jung Luke, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary-Treasurer, respectively, of Nehi Beverage Company of Hawaii, Ltd., a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said H. C. Lundburg and Kan Jung Luke acknowledged said instrument to be the free act and deed of said corporation.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

## EXHIBIT No. 17

## Assignment of Lease

This Indenture, made as of the opening of business on the 1st day of October, 1946, by and between Nehi Beverage Company of Hawaii, a registered special partnership (composed of Roy Eaton, general partner, and Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust made by Roy Eaton, Settlor, dated February 28, 1943, special partner) hereinafter called the "Assignor," and Nehi Beverage Company of Hawaii, Ltd., a corporation organized under the laws of the Territory of Hawaii, hereinafter called the "Assignee,"

## Witnesseth That:

In consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America, and other good and valuable consideration now paid to the Assignor by the Assignee, the receipt whereof the Assignor hereby acknowledges, the Assignor does hereby grant, bargain, sell, assign, transfer and set over unto the Assignee, its successors and assigns:

All that certain unrecorded lease dated March 1, 1940, by and between Hawaiian Transportation & Rock Products Company, Limited, as Lessor, and Roy Eaton, as Lessee, which said lease has been heretofore assigned to Nehi Beverage Company of Hawaii, and has been modified by letters of agreement dated January 24, 1941, and August 22, 1946, said lease being for a term to end May 31, 1950.

## Exhibit No. 17—(Continued)

To Have and to Hold the same unto the Assignee, its successors and assigns, for the unexpired residue of the term of said lease.

And, for the consideration aforesaid, the assignor does hereby covenant with the Assignee, its successors and assigns, that the Assignor is the absolute owner of said lease, free and clear of and from all encumbrances; that the Assignor has good right to sell and assign the same as aforesaid, and that the Assignor will, and its successors and assigns shall, warrant and defend unto the Assignee, its successors and assigns forever, the said lease against the claims and demands of all persons claiming by, through or under said Assignor, provided, however, that said Bishop Trust Company, Limited, as Trustee aforesaid, shall not be liable under this covenant beyond its present interest in and to the proceeds from the sale of the assets and property of said special partnership.

And, in consideration of the foregoing assignment, the Assignee does hereby covenant, for itself and its successors and assigns, with the Assignor, its successors and assigns, to pay the rent reserved by said lease, and to observe and perform all of the lessee's covenants therein contained, and to indemnify and keep indemnified the Assignor, its successors and assigns, against the nonpayment of said rent or the breach of any of said covenants or of this covenant, and all claims, damages, costs, counsel fees and expenses in connection therewith.

## Exhibit No. 17—(Continued)

In Witness Whereof, the parties hereto have executed these presents as of the day and year first above written.

NEHI BEVERAGE COMPANY  
OF HAWAII, LTD.,

By /s/ H. C. LUNDBURG,  
Its President.

By /s/ KAN JUNG LUKE,  
Its Secretary-Treasurer.

NEHI BEVERAGE COMPANY  
OF HAWAII,

By /s/ ROY EATON,  
General Partner.

By BISHOP TRUST COMPANY,  
LIMITED,  
Trustee as Aforesaid.

By /s/ E. BENNER, JR.,  
Its Vice President.

By /s/ G. H. VICARS, JR.,  
Its Asst. Vice President.,  
Special Partner.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 7th day of November, 1946, before me personally appeared Roy Eaton, to me known to be the person described in and who executed the fore-

Exhibit No. 17—(Continued)

going instrument, and duly acknowledged that he executed the same as his free act and deed.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 7th day of November, 1946, before me appeared E. Benner, Jr., and G. H. Vicars, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Vice President, respectively, of Bishop Trust Company, Limited, Trustee under Deed of Trust made by Roy Eaton, Settlor, dated February 28, 1943, a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said E. Benner, Jr., and G. H. Vicars, Jr., acknowledged said instrument to be the free act and deed of said corporation as Trustee as aforesaid.

[Seal]     /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

## Exhibit No. 17—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 7th day of November, 1946, before me appeared H. C. Lundburg and Kan Jung Luke, to me personally known, who, being by me duly sworn, did say that they are the President and Secretary-Treasurer, respectively, of Nehi Beverage Company of Hawaii, Ltd., a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said H. C. Lundburg and Kan Jung Luke acknowledged said instrument to be the free act and deed of said corporation.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

## EXHIBIT No. 18

\$91,000.00                Honolulu, T. H., October 1, 1946.

For Value Received, the undersigned, Nehi Beverage Company of Hawaii, Ltd., a Hawaiian corporation, promises to pay to the order of Roy Eaton in Honolulu, the sum of Ninety-One Thousand Dollars, payable in installments on the dates as indicated hereunder:

Oct. 1, 1947 .....	\$4,900.00	Apr. 1, 1953 .....	\$4,200.00
Apr. 1, 1948 .....	4,200.00	Oct. 1, 1953 .....	4,200.00
Oct. 1, 1948 .....	4,200.00	Apr. 1, 1954 .....	4,200.00
Apr. 1, 1949 .....	4,200.00	Oct. 1, 1954 .....	4,200.00
Oct. 1, 1949 .....	4,200.00	Apr. 1, 1955 .....	4,200.00
Apr. 1, 1950 .....	4,200.00	Oct. 1, 1955 .....	4,200.00
Oct. 1, 1950 .....	4,200.00	Apr. 1, 1956 .....	4,200.00
Apr. 1, 1951 .....	4,200.00	Oct. 1, 1956 .....	4,200.00
Oct. 1, 1951 .....	4,200.00	Apr. 1, 1957 .....	4,200.00
Apr. 1, 1952 .....	4,200.00	Oct. 1, 1957 .....	4,200.00
Oct. 1, 1952 .....	4,200.00	Apr. 1, 1958 .....	2,100.00

In case of default in any payment of any installment of principal or in the performance of the undertakings of the maker under pledge agreement of even date herewith, the entire debt shall immediately become due and payable at the option of the holder hereof, with interest thereon after maturity, at six per cent (6%) per annum. Should any suit for collection be instituted, the undersigned shall also pay costs of collection, including reasonable attorney's fees.

NEHI BEVERAGE COMPANY  
OF HAWAII, LTD.,

By /s/ H. C. LUNDBURG,  
Its President.

By /s/ KAN JUNG LUKE,  
Its Secretary-Treasurer.

Secured by Pledge Agreement.

EXHIBIT No. 19

\$24,500.00                      Honolulu, T. H., October 1, 1946.

For Value Received, the undersigned, Nehi Beverage Company of Hawaii, Ltd., a Hawaiian cor-

poration, promises to pay to the order of Roy Eaton in Honolulu, the sum of Twenty-Four Thousand Five Hundred Dollars, payable in installments on the dates as indicated hereunder:

January 2, 1947, the sum of \$21,000.00.

October 1, 1947, the sum of \$3,500.00.

In case of default in any payment of any installment of principal or in the performance of the undertakings of the maker under pledge agreement of even date herewith, the entire debt shall immediately become due and payable at the option of the holder hereof, with interest thereon after maturity, at six per cent (6%) per annum. Should any suit for collection be instituted, the undersigned shall also pay costs of collection, including reasonable attorney's fees.

NEHI BEVERAGE COMPANY  
OF HAWAII, LTD.,

By /s/ H. C. LUNDBURG,  
Its President.

By /s/ KAN JUNG LUKE,  
Its Secretary-Treasurer.

Secured by Pledge Agreement.

EXHIBIT No. 20

\$39,000.00 Honolulu, T. H., October 1, 1946.

For Value Received, the undersigned, Nehi Beverage Company of Hawaii, Ltd., a Hawaiian corporation, promises to pay to the order of Bishop Trust Company, Limited, Trustee under Deed of



Trust made by Roy Eaton, Settlor, dated February 28, 1943, in Honolulu, the sum of Thirty-Nine Thousand Dollars, payable in installments on the dates as indicated hereunder:

Oct. 1, 1947 .....	\$2,100.00	Apr. 1, 1953 .....	\$1,800.00
Apr. 1, 1948 .....	1,800.00	Oct. 1, 1953 .....	1,800.00
Oct. 1, 1948 .....	1,800.00	Apr. 1, 1954 .....	1,800.00
Apr. 1, 1949 .....	1,800.00	Oct. 1, 1954 .....	1,800.00
Oct. 1, 1949 .....	1,800.00	Apr. 1, 1955 .....	1,800.00
Apr. 1, 1950 .....	1,800.00	Oct. 1, 1955 .....	1,800.00
Oct. 1, 1950 .....	1,800.00	Apr. 1, 1956 .....	1,800.00
Apr. 1, 1951 .....	1,800.00	Oct. 1, 1956 .....	1,800.00
Oct. 1, 1951 .....	1,800.00	Apr. 1, 1957 .....	1,800.00
Apr. 1, 1952 .....	1,800.00	Oct. 1, 1957 .....	1,800.00
Oct. 1, 1952 .....	1,800.00	Apr. 1, 1958 .....	900.00

In case of default in any payment of any installment of principal or in the performance of the undertakings of the maker under pledge agreement of even date herewith, the entire debt shall immediately become due and payable at the option of the holder hereof, with interest thereon after maturity, at six per cent (6%) per annum. Should any suit for collection be instituted, the undersigned shall also pay costs of collection, including reasonable attorneys' fees.

NEHI BEVERAGE COMPANY  
OF HAWAII, LTD.,

By /s/ H. C. LUNDBURG,  
Its President.

By /s/ KAN JUNG LUKE,  
Its Secretary-Treasurer.

Secured by Pledge Agreement.

## EXHIBIT No. 21

\$10,500.00 Honolulu, T. H., October 1, 1946.

For Value Received, the undersigned, Nehi Beverage Company of Hawaii, Ltd., a Hawaiian corporation, promises to pay to the order of Bishop Trust Company, Limited, Trustee under Deed of Trust made by Roy Eaton, Settlor, dated February 28, 1943, in Honolulu, the sum of Ten Thousand Five Hundred Dollars, payable in installments on the dates as indicated hereunder:

January 2, 1947, the sum of \$9,000.00.

October 1, 1947, the sum of \$1,500.00.

In case of default in any payment of any installment of principal or in the performance of the undertakings of the maker under pledge agreement of even date herewith, the entire debt shall immediately become due and payable at the option of the holder hereof, with interest thereon after maturity, at six per cent (6%) per annum. Should any suit for collection be instituted, the undersigned shall also pay costs of collection, including reasonable attorney's fees.

NEHI BEVERAGE COMPANY  
OF HAWAII, LTD.,

By /s/ H. C. LUNDBURG,  
Its President.

By /s/ KAN JUNG LUKE,  
Its Secretary-Treasurer.

Secured by Pledge Agreement.

EXHIBIT No. 22

In the Office of the Treasurer of the  
Territory of Hawaii

In the Matter of  
The Special Partnership of NEHI BEVERAGE  
COMPANY OF HAWAII

CANCELLATION OF CERTIFICATE OF  
SPECIAL PARTNERSHIP

The Certificate of Special Partnership of Nehi Beverage Company of Hawaii heretofore filed in the Office of the Treasurer of the Territory of Hawaii is hereby cancelled as of the date of execution hereof.

The partners prior to the dissolution were Roy Eaton, General Partner, and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943, Special Partner.

In Witness Whereof said Roy Eaton and Bishop Trust Company, Limited, Trustee as aforesaid, have caused this Certificate to be executed this 10th day of December, 1946.

/s/ ROY EATON,  
General Partner.

[Seal] BISHOP TRUST COMPANY,  
LIMITED,

By /s/ E. BENNER, JR.,  
Its Vice President.

By /s/ CHAS. G. HEISER, JR.,  
Its Vice President,

Trustee as Aforesaid and Not Individually, Special Partner.

## Exhibit No. 22—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 10th day of December, 1946, before me personally appeared Roy Eaton, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires June 30, 1949.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 10th day of December, 1946, before me appeared E. Benner, Jr., and Chas. G. Heiser, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice President and Vice President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Trustee under Deed of Trust of Roy Eaton dated February 28, 1943; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said E. Benner, Jr., and Chas. G. Heiser, Jr., acknowledged said instrument to be the free act and deed of said corporation as Trustee aforesaid.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires 6/30/49.

EXHIBIT No. 29

187

Roy Eaton Trust #1

Schedule of Income and Expenses  
September 30, 1942 to September 30, 1950

	Fiscal Year Ended September 30,								
	1943	1944	1945	1946	1947	1948	1949	1950	Total
Income:									
Distributive share of partnership profits of Nehi Beverage Company for fiscal period ended June 30 .....	\$9,629.97								\$ 9,629.97
Interest received on notes .....		\$ 750.00	\$750.00	\$750.00	\$547.91				2,797.91
Interest on bonds and savings and loan associations .....					276.17	\$537.50	\$545.28	\$556.85	1,915.80
Dividends received on stocks .....				62.46	83.28	83.28	83.28	83.28	395.58
	<u>\$9,629.97</u>	<u>\$ 750.00</u>	<u>\$750.00</u>	<u>\$812.46</u>	<u>\$907.36</u>	<u>\$620.78</u>	<u>\$628.56</u>	<u>\$640.13</u>	<u>\$14,739.26</u>
Expenses:									
Trustee fees .....		200.00	75.00	81.24	89.98	62.08	62.86	64.01	635.17
Tax service fees .....		15.00	25.00	25.00	25.00	15.00	15.00	15.00	135.00
Federal income taxes .....		2,131.71	794.82	81.96	197.36	111.55	73.89	75.51	3,466.80
Territorial income taxes .....		145.27	48.42		2.42				196.11
Interest accrued on bonds purchased ....					7.55				7.55
Bank charges .....					.15		.05	.05	.25
Postage on securities .....					1.67				1.67
		<u>2,491.98</u>	<u>943.24</u>	<u>188.20</u>	<u>324.13</u>	<u>188.63</u>	<u>151.80</u>	<u>154.57</u>	<u>4,442.55</u>
Net Income .....	<u>\$9,629.97</u>	<u>\$(1,741.98)</u>	<u>\$(193.24)</u>	<u>\$624.26</u>	<u>\$583.23</u>	<u>\$432.15</u>	<u>\$476.76</u>	<u>\$485.56</u>	<u>\$10,296.71</u>
Gift by Roy Eaton at September 30, 1942 .....									15,000.00
Trust Balance—Inventory attached .....									<u>\$25,296.71</u>

## EXHIBIT A

Nehi Beverage Company of Hawaii  
Balance Sheet, September 30, 1946

## ASSETS

## Current Assets

Cash in bank and on hand.....		\$ 26,010.88
Accounts receivable, trade.....	8,777.76	
Accounts receivable, employees.....	73.65	
Claims receivable .....	243.13	9,094.54

## Inventories, at the lower of cost or market

Finished goods .....	2,078.99	
Bottles and cases .....	32,776.52	
Beverage coolers held for sale.....	787.48	
Manufacturing supplies .....	20,731.37	56,374.36

Special Deposit .....		25.00
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## Fixed Assets

	Cost	Depreciation Reserve	Net
Beverage coolers .....	\$ 725.25	\$ 558.04	\$ 167.21
Machinery and equipment .....	67,575.78	33,267.05	34,308.73
Automobiles and trucks .....	29,239.02	21,465.47	7,773.55
Office furniture and fixtures .....	3,322.66	1,619.73	1,702.93
Leaschold improvements .....	18,684.20	8,215.94	10,468.26
	\$119,546.91	\$65,126.23	54,420.68

## Deferred Charges

Unexpired insurance .....		\$ 3,476.88
Repair parts, office supplies, etc.....		3,500.26
Prepaid taxes .....		836.94
		7,814.08
		\$153,739.54

## LIABILITIES

## Current Liabilities

Accounts payable .....		\$ 10,220.62
Note payable, unsecured, Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton dated September 30, 1942, and accrued in- terest at 5% per annum .....		15,437.50
Accrued taxes .....		2,250.83
Accrued wages .....		316.90
		\$ 28,225.85

## Partners' Capital and Drawing Accounts

Special partner — Bishop Trust Company under  
Deed of Trust of Roy Eaton dated February  
28, 1943

Capital Account .....	\$30,000.00	
Drawing Account .....	19,000.98	\$49,000.98

General Partner—Roy Eaton

Capital Account .....	70,000.00	
Drawing Account .....	6,512.71	76,512.71

\$153,739.54

## EXHIBIT No. 31

Roy Eaton Trust #1

Inventory of Assets

September 30, 1950

Cash .....	\$	377.61
Stocks: 100 shares Hawaiian Electric Co. "C," 41¼% cumulative pfd. ....		2,050.00
Bonds:		
U. S. Savings Bond—Series "G" .....	\$5,000.00	
U. S. Treasury Bond, 2½ .....	5,169.10	10,169.10
Savings and Loan Certificates:		
Home Mutual Savings and Loan Asso- ciation .....	\$5,000.00	
Citizens Federal Savings and Loan Asso- ciation .....	5,000.00	
First Federal Savings and Loan Asso- ciation of Hawaii .....	2,700.00	12,700.00
		<u>25,296.71</u>
		<u><u>\$25,296.71</u></u>

## EXHIBIT No. 32

## Roy Eaton Trust #2

## Schedule of Income and Expenses

February 28, 1943, to February 28, 1951, Inclusive

	1944	1945	1946	Fiscal Year Ended February 28			1950	1951	Total
				1947	1948	1949			
<b>Income</b>									
Distributive share of profits and losses of Nehi Beverage Co. of Hawaii for the fiscal period ending June 30 .....	\$7,722.93	\$22,059.40	\$23,076.92	\$ 5,182.80					\$ 58,042.05
Excess of assets received over investment on sale of Nehi Beverage Co. of Hawaii .....				40,034.70					40,034.70
Refunds .....					\$ 171.29				171.29
Interest on bonds and savings and loan association.....					750.00	\$ 811.56	\$ 911.75	\$ 947.92	3,421.23
Dividends received on stocks.....					890.00	966.45	1,197.67	1,579.13	4,633.25
Proceeds from sale of stock rights .....							2.26		2.26
	<u>7,722.93</u>	<u>22,059.40</u>	<u>23,076.92</u>	<u>45,217.50</u>	<u>1,811.29</u>	<u>1,778.01</u>	<u>2,111.68</u>	<u>2,527.05</u>	<u>106,304.78</u>
<b>Expenses</b>									
Trustee fees .....			850.00	300.00	144.80	154.46	177.66	206.89	1,833.81
Tax service fee.....		15.00	25.00	25.00	25.00	25.00	25.00	25.00	165.00
Federal income taxes.....		2,079.06	9,007.93	9,497.03		472.53	1,116.64		22,173.19
Territorial income taxes.....		147.44	494.00	308.47		39.31	134.76		1,123.98
C. and D. taxes on Mainland dividends .....					13.30	14.55	18.06	18.62	64.53
Bank charges .....				.05	.05		.05		.15
Postage on securities .....						2.46	.52		2.98
		<u>2,241.50</u>	<u>10,376.93</u>	<u>10,130.55</u>	<u>183.15</u>	<u>708.31</u>	<u>1,472.69</u>	<u>250.51</u>	<u>25,363.64</u>
Net income .....	<u>\$7,722.93</u>	<u>\$19,817.90</u>	<u>\$12,699.99</u>	<u>\$35,086.95</u>	<u>\$1,628.14</u>	<u>\$1,069.70</u>	<u>\$ 638.99</u>	<u>\$2,276.54</u>	<u>\$80,941.14</u>
Gift by Roy Eaton at February 28, 1943 .....									15,000.00
Trust balance—Inventory attached....									<u>\$95,941.14</u>





EXHIBIT No. 33

Roy Eaton Trust #2

Schedule of Receipts of Distributive Share of Income of  
Nehi Beverage Co. of Hawaii

	Fiscal year ended June 30		June 30, 1946		Total
	1943	1944	1945	1946	
Distributive share of income .....	\$7,722.93	\$22,059.40	\$23,076.92	\$353.37	\$58,042.05
Payments made:					
April 1, 1944 .....	600.00				
June 10, 1944 .....	1,000.00				
June 30, 1944 (note) .....		16,400.00			
September 11, 1944 .....	188.26				
October 11, 1944 .....	30.00				
March 1, 1945 .....	3,000.00				
June 13, 1945 .....	2,634.67	300.00			
September 17, 1945 .....		5,000.00			
March 8, 1946 .....		359.40	2,140.60		
June 13, 1946 .....			2,118.14		
September 13, 1946 .....			5,000.00		
November 6, 1946 .....			13,818.18	353.37	
		\$22,059.40	\$23,076.92	\$353.37	
	\$7,722.93				\$58,042.05

Note: By transfer of capital interest.

## EXHIBIT No. 34

Roy Eaton Trust No. 2

Inventory of Assets, February 28, 1951

Cash		\$ 3,604.22
Stocks		
27 shares American Telephone & Telegraph Co.....	\$4,409.40	
75 shares Chase National Bank.....	2,959.10	
75 shares Continental Insurance Co.....	3,030.30	
60 shares E. I. duPont DeNemours & Co.....	2,832.56	
50 shares Hawaiian Electric Co. "D," 5% Pfd.....	1,017.50	
100 shares Hawaiian Electric Co. "E," 5% Pfd.....	2,000.00	
55 shares Standard Oil Company of New Jersey.....	3,587.10	
60 shares F. W. Woolworth Co.....	2,901.96	
300 shares Mutual Telephone Co. 4.8% Pfd.....	3,099.00	
Savings and Loan Certificates		
First Federal Savings and Loan Assoc. of Hawaii.....	\$5,000.00	
Citizens Federal Savings and Loan Association.....	3,000.00	
U. S. Savings Bonds—Series "G".....		30,000.00
Note Receivable from Nehi Beverage Co. of Hawaii, Ltd.....		28,500.00
		<hr/>
		\$95,941.14

EXHIBIT No. 35

Roy Eaton Trust No. 1—Schedule of Federal Fiduciary Tax Returns Filed

Calendar Year

	1942	1943	1944	1945	1946	1947	1948	1949	1950
Income									
Income from partnerships .....		\$10,049.17							
Interest .....			\$750.00	\$750.00	\$1,297.91	\$379.32	\$539.03	\$550.00	\$565.60
Dividends .....					85.29	85.00	85.00	85.00	85.00
Total Income.....	None	10,049.17	750.00	750.00	1,383.20	464.32	624.03	635.00	650.60
Deductions									
Taxes .....			193.69		1.72	4.14	1.72	1.72	1.72
Trustee fees .....		125.00	90.00	175.00	88.29	71.27	77.23	78.33	64.88
Contributions .....		176.67							
Bank charges .....						.15		.05	.05
Tax service fee.....									15.00
Total deductions	None	301.67	283.69	175.00	90.01	75.56	78.95	80.10	81.65
Income taxable to fiduciary .....	None	\$ 9,747.50	\$466.31	\$575.00	\$1,293.19	\$388.76	\$545.08	\$554.90	\$568.95
Tax paid .....	None	\$ 2,842.28	\$ 84.25	\$109.25	\$ 226.76	\$ 54.86	\$ 73.89	\$ 75.51	\$ 81.60

## EXHIBIT No. 36

## Roy Eaton Trust No. 2—Schedule of Federal Fiduciary Tax Returns Filed

Income	Calendar Year							
	1943	1944	1945	1946	1947	1948	1949	1950
Income from partnerships .....	\$7,574.90	\$22,916.42	\$23,714.38	\$ 446.06				
Interest .....					\$ 750.00	\$ 811.56	\$ 886.75	\$ 935.42
Dividends .....					755.00	987.25	1,166.80	1,300.91
Gain or (loss) from sale or exchange of capital assets	194.76		130.65	1,275.86	1,050.00	1,350.00	1,799.68	900.00
Refunds .....					171.29			
<b>Total income....</b>	<b>7,769.66</b>	<b>22,916.42</b>	<b>23,845.03</b>	<b>1,721.92</b>	<b>2,726.29</b>	<b>3,148.81</b>	<b>3,853.23</b>	<b>3,136.33</b>
<b>Deductions</b>								
Taxes .....		147.44	494.00	308.47	8.00	18.40	78.54	102.24
Trustee Fees .....		415.00	325.00	475.00	175.50	165.98	198.48	186.07
Contributions .....	66.67	308.33	366.67	258.29				
Bank charges .....					.05	.05	.05	
Postage .....							2.46	
Tax service fee.....								25.00
<b>Total deductions</b>	<b>66.67</b>	<b>870.77</b>	<b>1,185.67</b>	<b>1,041.76</b>	<b>183.55</b>	<b>184.43</b>	<b>279.53</b>	<b>313.31</b>
<b>Income Taxable to Fiduciary .....</b>	<b>\$7,702.99</b>	<b>\$22,045.65</b>	<b>\$22,659.36</b>	<b>\$ 680.16</b>	<b>\$2,542.74</b>	<b>\$2,964.38</b>	<b>\$3,573.70</b>	<b>\$2,823.02</b>
<b>Tax Paid .....</b>	<b>\$2,079.06</b>	<b>\$ 9,007.93</b>	<b>\$ 9,386.80</b>	<b>\$ 110.23</b>	<b>\$ 472.53</b>	<b>\$ 499.34</b>	<b>\$ 617.30</b>	<b>\$ 492.74</b>

Filed at hearing June 18, 1951, T.C.U.S.

Before The Tax Court of The United States

Docket No. 24081

In the Matter of:

ROY EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 24082

In the Matter of:

GENEVIEVE H. EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PROCEEDINGS

Pursuant to notice, the above entitled matter came on to be heard.

Before: Honorable C. R. Arundell,

Judge.

Appearances:

URBAN E. WILD, ESQ.,

MILTON CADES, ESQ.,

Appearing on behalf of Petitioners.

CHARLES W. NYQUIST, ESQ.,

Appearing on behalf of Respondent.

Honolulu, T. H., June 18, 1951

The Court: Well, I think I understand the matter generally so that I can follow it, and I think the best thing is to go ahead with the witnesses.

Mr. Wild: Mr. Eaton, will you please take the stand?

ROY EATON,

Petitioner, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wild:

Q. Will you please state your full name?

A. Roy Eaton.

Q. Are you the petitioner in docket number 24081 now on trial?           A. I am.

Q. And is the Genevieve Eaton referred to in docket number 24082 your wife?           A. She is.

Q. When did you first acquire the franchise or three franchises for Nehi beverages?

A. Well, it was early in 1940. The business did not actually start operation until June of 1940, but before we made our investment in machinery and equipment, and so forth, we were assured we would receive the franchises if that was done. [24\*]

Q. Prior to that time had Nehi Corporation had a franchise in Hawaii?           A. No, they had not.

Q. And what were you to do in connection with that franchise if and when you received it?

A. Well, before they would agree to issue it to

(Testimony of Roy Eaton.)

me I had to satisfy them that I had sufficient capital to go ahead and establish a bottling plant which would meet their specifications. That is, I had to buy bottling machinery, bottles, cases, crowns, and other supplies, trucks, and so forth, and be able to carry on the business of a Nehi bottler.

Q. And were there more than one of these franchises that you received?

A. Yes, there were three, one for each of the company's principal products, Royal Crown Cola, Nehi beverages and Par-T-Pak beverages.

Q. Prior to that time had you represented the company under a franchise of any sort?

A. No, sir, I had not.

Q. Was this your first experience as a professional bottler, as it were? A. Yes, it was.

Q. And did you have others in your employ who set up the machines, and so forth, to operate them? [25] A. Yes, I did.

Q. Now what time was it when you actually got the plant so that it could operate?

A. June 8, 1940, I believe was the first day we opened our business.

Q. And at that time who did you have employed in the plant and for what purposes?

A. You mean by name?

Q. No, no, your positions in the plant, let's put it that way.

A. We had a plant superintendent and bottle machine operators, five or six, and I think four



(Testimony of Roy Eaton.)

truck drivers to begin with, driver salesmen; a sales manager, office help, a janitor. I believe that comprises the principal ones.

Q. Now, will you describe the type of business that is done under this franchise? What did you do?

A. Well, we purchase concentrates from Nehi Corporation. With those concentrates we make syrup. That syrup, together with carbonated water is placed in bottles, cased and distributed to retail trade where it is sold to the public. We advertised our products to the public. That is the principal function of a bottler, I believe.

Q. Is capital an essential element in that business?

A. Yes, sir, the Nehi Corporation will not grant the franchise to anyone unless they are satisfied that they [26] have sufficient capital to conduct the business.

Q. And did anyone from Nehi Corporation come to Hawaii and assist you in setting up the bottling plant and other things?

A. Yes, they did. The Western Division Manager, who is in charge of the corporation's interest in that area, came down here when I came down here and assisted me in selecting the proper location and arranging the contract for the construction of the plant, and then he returned to the mainland while I continued to see about the purchase of the machinery and its installation. Approximately a week before the plant actually

(Testimony of Roy Eaton.)

started operation he came down here together with two other men who were in his employ to assist us in the opening of the business and to train me in its operation.

Q. Now you continued the operation of the business up until December 7, 1941, did you not?

A. Yes, sir.

Q. What effect did the enemy attack on December 7, 1941, have on your business, if any?

A. Well, of course, we didn't know right after December 7, we didn't know what was going to happen. However, the colonel in charge of the post exchanges contacted me and called me to his office and said that he wanted to know about the supplies that we had on hand and said that they [27] considered an adequate supply of carbonated beverages essential as a morale factor to the troops here and asked us what we could produce, and so forth. They indicated they would assist us in getting supplies. We did continue distributing our products to retail stores. We didn't know really from day to day just what was going to happen. We were very worried as to whether or not we were going to be able to obtain any supplies. It was very uncertain, except possibly for supplying our products to the military posts.

Q. Will you describe in general what was necessary at that time to receive supplies? Was it necessary to procure any orders of any sort?

A. Well, in the beginning, of course, the island was under military governorship, and it was neces-

(Testimony of Roy Eaton.)

sary to go to the military governor's office and obtain an order from him for shipping space. It was necessary then to send that to the mainland, and if and when such space was available in accordance with the priority which he had issued, those materials would move to the islands. Now that at first was conducted quite informally. Colonel Heyford, I believe, represented the territorial governor so far as the supplies were concerned, and he would call up the colonel in charge of the post exchange, for instance, and say that I was there in his office requesting space and that did he think that I ought to have it, did he think that my products [28] were necessary. He would say yes. He would give me some allocation of space.

Q. At that time were you advised when shipments were made? That is, shipments from the coast?

A. No, we were not.

Q. And why was that, do you know?

A. Well, I think it was a question of security. All information about shipping was very closely guarded.

Q. And did you at that time have any concern about the franchise as it was in your own name, as you stated?

A. Yes, sir, I did. I was very much worried about it. Shortly after December 7 or on December 7, I was living on the other side of the island, and shortly after that it became very apparent it was going to be necessary for me to move over to the Honolulu side of the island because of gasoline

(Testimony of Roy Eaton.)

rationing, and time permitted because of the black out, and so forth. I moved over, if I remember, late in February. We hadn't been in our house but about a week when a bomb dropped up there on the hill where we lived and kicked dirt down on our house, which thoroughly frightened us, and from then on I began worrying a good deal about what would happen to the business should anything happen to me, especially as far as the franchises were concerned, because the franchises were really the greatest asset that we had, and they were issued in my name. If anything happened to me, why I didn't know what [29] would happen. I knew that it would be necessary for something to be done, but I didn't know what just exactly would happen under those circumstances.

Q. And you wrote some letters, which, your Honor, are Exhibits one, and the response two, and his letter in response three, and the letter in response four annexed to the stipulation. You wrote letters addressed to Nehi Corporation outlining your problem?

A. That's right.

Q. Now what happened after you received the last letter which is dated here July 14, 1942?

A. Well, I wasn't at all satisfied with the suggestions made by the president of the Nehi Corporation as to the procedure that would be followed in case something happened to me. He indicated the possibility of sending a man down here. I knew he didn't understand the circumstances that existed here at the time, and I went to an attorney to seek

(Testimony of Roy Eaton.)

advice on what I could do to protect my family and those franchises in case anything happened to me.

Q. What were the circumstances that you just spoke of that would be different here? You said the changed circumstances from the mainland.

A. I believe in those letters the president of the Nehi Corporation stated that they would send a man to continue the operation of the plant and that it was the policy of [30] the Nehi Corporation to do everything possible to protect the heirs of any of their bottlers and see that the business continued and was either sold or a manager installed, or something to that effect. But that would not have been possible in Honolulu at that time, and there was no indication as to when it might become possible.

Q. Very well. Now you stated that you conferred with counsel on your problem. As a result of that, what did you finally decide to do?

A. Well, prior to the time that I had written these letters, actually I had been discussing this problem with Mr. Johnson and Mr. Prock.

Q. Who are they?

A. Mr. Johnson was my office manager. He started working for me, I believe, in the summer of 1941. Mr. Prock was in the insurance business here and was one of the first men that I met when I came to the islands, and Mr. and Mrs. Prock and myself and Mrs. Eaton had become very good friends. They were both in the service, but were stationed here. They had been in the reserves.

(Testimony of Roy Eaton.)

Their families had been sent to the mainland by the government.

Q. You say you conferred with them about your problem?

A. Well, they spent a good deal of time at our home after their families went to the mainland. Mr. Johnson, of course, having been associated with the business, was [31] actually continuing to do some work for me at that time in supervising the books, giving such time as he could, and both of them had been interested in the business, and Mr. Prock was also interested in our problems.

I knew that the Los Angeles plant, the Nehi plant was owned by two men and that both of their names were on their franchises, and I understood that was true in other places, and that was one of the ideas that we had discussed and one of the ideas that I brought up with my attorney when I went to see him.

Q. Had any suggestion been made concerning the possibility of the Nehi Corporation issuing a franchise to a corporation?

A. Well, I had been told very definitely they wouldn't. They would only issue their franchise to an individual or to two or three individuals.

Q. Now after all these conferences, what did you decide to do as your solution to your problem?

A. Well, I had two or three conferences with my attorney. He requested me to bring him copies of the franchises, which he went over and we discussed the problem generally, and it was his recom-

(Testimony of Roy Eaton.)

mentation that a partnership be formed, and we proceeded to do that.

Q. And what was the decision concerning the participation in that partnership by a trust?

A. Well, in our discussions one of the problems that came [32] up was the fact that while Mr. Johnson and Mr. Prock were now stationed here in the islands, it was possible that they might be leaving. In addition to that, neither one of them had had any experience in general business management, and it was my desire to have somebody associated, if possible, that would have broad experience in business management, and if something happened to me I would have further assurance that the business would be carried on to the best advantage for my family. Mr. Culbert, the president of the Nehi Corporation, had made some mention of an executor in one of his letters, and tying in a financial institution possibly or someone who could carry things on in case of my death.

Q. Well, as a result of these conferences and of your own ideas you executed the deed of trust and settled \$15,000 and signed the partnership agreement, as is set forth in the stipulation?

A. I did.

Q. And at the time this partnership was formed, were there other general partners?

A. Yes, Mr. Johnson and Mr. Prock became general partners and their names were put on the franchise. That was very much a part of the whole

(Testimony of Roy Eaton.)

idea, an agreement to secure the franchise in case anything happened to me.

Q. And did you, after the formation of the partnership, [33] receive compensation for your services from the partnership? A. Yes, I did.

Q. And what was the amount of that compensation which you received at the start?

A. Well, at the start it was \$1,250 a month.

Q. And how was that treated in connection with the partnership accounts?

A. Well, it was treated as a salary to me, as an expense of the business.

Q. I see. Do you yourself, as of those years, consider that as adequate compensation to pay you for your personal services to the business?

A. I did, yes.

Q. And later on was that salary modified?

A. Yes, it was. As our business increased and responsibilities became greater, my salary was increased to \$1,750 a month.

Q. Now sometime in the early part of 1943 were you advised of some tax decision that might affect your position?

A. I was. My attorney called me on the phone and informed me that there had been a decision which would affect me and asked me to come down to his office, and he explained it to me, and I was naturally very much worried about it, because he said that there was a possibility that the tax on the [34] proportion of the profits which belonged to the trust might be assessed to me, and without it



(Testimony of Roy Eaton.)

being possible at all for me to get any of the income I would have been in a very bad way. I mean it wouldn't have been possible for me to pay the tax.

Q. Under the partnership agreement you could terminate the partnership on a sixty-day—with a sixty-day notice, as is shown in the stipulation. Did you consider that at that time?

A. Well, I wanted to carry the thing on the way it was. I mean the whole purpose of setting it up was again a protection for my family, and I didn't want to disturb that situation, and we had some discussions about it with the trust company, and the trust officers that had been administering it, and so forth, and with my attorney we went over it in quite some detail.

Q. And as a result of those conferences did you do anything?

A. Well, it was recommended and the trust company agreed to the establishment of another trust which would eliminate the provisions which might make this income taxable to me so that we could carry things on substantially as they had been carried on, and we followed out their recommendation. I did; I followed the recommendation.

Q. Now prior to the time that you were notified of this [35] decision of the court by your counsel, had you considered anything concerning your own tax problems as a motive for setting up the first trust or the partnership?

A. No, sir, I had not. The question of taxes was

(Testimony of Roy Eaton.)

never discussed in the establishment of the first trust and was never a consideration in any way.

Q. Now then, during the period of time that you were operating as a partnership, that is after the partnership was formed, what if any were your relations with Bishop Trust Company, Limited, who was the trustee named in the trust indenture and was your special partner as such trustee?

A. Well, I saw the trust officer who was in charge of the trust very regularly, and we discussed the problems of the business. There again I was interested in trying to educate them as to the operation of the business in case anything happened to me. I wanted them to know, and of course, all financial statements they saw, and any questions of policy or anything of that kind I discussed with them, and I think they were very well informed on the operation of the business, as far as its policies and finances were concerned.

Q. And how often would you say you would confer with them during that period of time?

A. At least once a month, and probably oftener.

Q. Did you seek their advice on various matters that came [36] up from time to time in the partnership business?      A. I did.

Q. With whom did you deal in the Bishop Trust Company?

A. At first there was a Mr. White, and then very often Mr. Benner sat in with Mr. White on our discussions, and later on it was all Mr. Benner

(Testimony of Roy Eaton.)

practically altogether. That was quite later on in the arrangement.

Q. And what was their attitude in regard to the shares of the profit that were attributable to the trust interest in the partnership?

A. Well, one of the problems that the business faced was a very rapid expansion and inadequate capital, and we discussed that a good many times about leaving the profits in the business, and in fact it was necessary that we do it. One time we discussed the possibility of a bank loan and we decided against that, and it was determined to leave the profits in the business until such time as there was sufficient capital to pay them out.

Q. And during that period of time did the trust company or any officer press you on more than one occasion to know whether it was not possible to get portions of the profits at that time?

A. Well, they did. They, of course, required that enough of those profits be paid out to meet the expenses of the trust and taxes and that sort of thing, and that [37] was paid.

Q. And finally were all of the capital interests and all of the income interests of the trust paid to the trustee?      A. Yes, sir, they were.

Q. Now coming up to the year 1946 there was a change made in your partnership in 1946. Will you explain that, please?

A. Well, after Mr. Prock and Mr. Johnson got out of the service they came back and became actively engaged in the business and remained so

(Testimony of Roy Eaton.)

for several months, and then because of certain personal problems and considerations they decided that they wanted to dispose of their interest in the partnership.

Q. Did you agree at that time with them to purchase their interest?           A. Yes, I did.

Q. And I think that the bill of sale and all is in the stipulation.

A. We had a special audit made to determine the actual value of the partnership interest as determined by the books, and I purchased their partnership interest from them on that basis.

Q. And later that year was there some proposal made concerning the possible purchase of the partnership business?

A. Yes, there was. Three men, well one man came to me and talked to me about it. I believe it was sometime in [38] August.

Q. Of what year?           A. Of 1946.

Q. And then you opened negotiations?

A. He expressed an interest in purchasing the plant.

Q. I see, and did you contact your special partner concerning that?

A. I did immediately, yes.

Q. And what happened as a result of that proposal?

A. Well, we entered into discussions with these people.

Q. When you say "we" who do you mean?

A. Well, I mean the trust company officers and

(Testimony of Roy Eaton.)

myself and then eventually we had a meeting with attorneys and the prospective purchasers and negotiated a deal, a sale.

Q. Did you have any personal interest in the purchasing company?      A. None whatsoever.

Q. And the sale was finally agreed to by the special partner?

A. Yes, they participated in the negotiations at the time of the sale.

Q. And that sale was completed?

A. Yes, it was.

Q. And were the franchises transferred at that time?      A. Yes, sir. [39]

Q. So that you had no further interest as owner of the franchises?

A. Absolutely. My name was taken off.

Q. However, who was the franchise transferred to?      A. Who were they transferred to?

Q. Yes.

A. It was transferred to a Mr. Lundberg.

The Court: Is that by assignment on your part or by issuing new franchises by the Nehi Company?

The Witness: By the issuance of a new franchise. When you cease to have any interest in the business, the franchise is automatically cancelled, as far as I was concerned, and it was necessary for the Nehi Corporation to issue a new franchise then.

Q. (By Mr. Wild): And was the corporation named in that franchise as holder of it,

A. No, sir.

Q. Just the individuals?

(Testimony of Roy Eaton.)

A. That's right.

Mr. Wild: Your Honor, I think the copies of the notes and all, and the sales document are in the stipulation.

Q. Now during all this period of time of the special partnership were you giving accounts concerning the business and affairs of the company to your special partner? [40] A. Yes, sir.

Q. How often did you give those accounts to the special partner?

A. Well, our auditors were instructed to give copies of their financial reports to the trust company, and I always went down and we discussed them, and they were kept informed by me of the condition of the company in our regular meetings together.

Q. Who was this auditor? Was that an inside auditor with your company?

A. No, sir, that was the firm of Cameron and Johnstone.

Q. And they are independent auditors?

A. Certified Public Accountants, yes, sir.

Q. Now, during the period of this partnership, who supported your children?

A. I beg your pardon?

Q. During the period of this partnership, from what source did your children receive their support? A. From me, from my salary.

Q. And was that true during all of the years of the special partnership? A. Yes, sir, it was.

(Testimony of Roy Eaton.)

Q. So that no amounts were paid out by the trustee for the benefit of the children?

A. Never have been, no, sir. [41]

Mr. Wild: You may cross-examine.

### Cross-Examination

By Mr. Nyquist:

Q. Mr. Eaton, you have testified at length concerning a franchise for the bottling of Nehi, Par-T-Pak and Royal Crown Cola. Is a franchise of that nature essential to the conduct of a bottled beverage business?

A. The Nehi business, it is, yes, sir, and the product that you bottle is the most valuable asset you have because of the national advertising and the assured quality of the products and the general reputation of the products.

Q. Well, is it practical to conduct a bottling business without such a franchise from some well-known, for some well-known beverage?

A. I don't think you can bottle any well-known beverage without a franchise. None of the nationally advertised beverages that I know about, Coca-Cola, Pepsi Cola, Nehi, Nesbitts, Delaware Punch, Hires, any of the beverages that I know anything about have parent companies and you have to have franchises and their permission and authority before you can bottle them.

Q. Then a franchise is really necessary to conduct a successful business in that line, is it?

A. I think it is, yes. There are a few instances,

(Testimony of Roy Eaton.)

I imagine, in the country where some entirely independent [42] bottler has been successful, but they are rather rare.

Q. It more or less represents the good will of the business, does it not, the name by which the product is known?

A. Well, yes, but it is a little more than that. I mean it is the—the parent companies employ rather high-powered talent to prepare advertising and merchandising plans which they make available to their bottlers, and so forth. There is a lot of assistance that they render.

The Court: May I ask, can you buy the concentrate unless you have a franchise?

The Witness: No, sir, you cannot.

The Court: Then a franchise is necessary to get the ingredients for this product?

The Witness: That's right.

The Court: That is what I thought.

Q. (By Mr. Nyquist): Well, you have testified concerning your concern over the possibility of your death and losing the franchise as a result of it. Did you consider that franchise to be an asset of substantial value to you or your estate?

A. Well, it was the greatest asset that my estate would have had.

Q. You mean that the physical equipment like the physical plant that you used to do the bottling, wouldn't that have a value by itself apart from the franchise? [43]

A. Yes, it would have a value. It could be sold



(Testimony of Roy Eaton.)

to someone, I presume, but it was the franchise that was the thing that is really worth the money and has the real value, the greatest value.

Q. Prior to the creation of the first trust in September of 1942, you operated the business as a sole proprietorship, did you not? A. Yes, sir.

Q. And did you have a business bank account?

A. Yes, sir.

Q. For the business as distinguished from a personal bank account? A. Yes, sir.

Q. You had both a business and a personal bank account? A. Yes, sir.

Q. At the time you created this number one trust what was the source of this \$15,000 contribution to the number one trust?

A. I don't remember.

Q. Did you draw money from your business bank account? A. I don't remember.

Q. Did you draw money from your personal bank account?

A. I rather imagine I did. [44]

Q. Did you hand cash to the trustee?

A. No, sir.

Q. Did you give him your personal note?

A. No, sir.

Q. But you don't remember whether you drew the money from a business or a personal bank account?

A. No, sir, I don't. Of course, it was all mine, as far as that goes.

Q. And after the creation of the number one

(Testimony of Roy Eaton.)

trust, can you tell me what happened to that \$15,000?

A. Well, the \$15,000 was used by the trustee for the purchase of an interest in the partnership.

Q. Then it came back into the business, the \$15,000 came back into the business, is that right?

A. Yes, sir.

Q. At the time you created the number one trust, was it your understanding that the income from that business that went into that trust would not be taxable to you?

A. The question of taxes never came up when we were discussing this matter. Frankly, I don't believe it was discussed at all. My sole interest was in establishing a set up which would protect my family in case anything happened to me.

Q. You mean it was a matter of indifference to you as to whether you or the trust paid the [46] taxes?

A. I don't think it came up. I don't think the question was discussed.

Q. You mean at that time it didn't occur to you as being a matter of importance one way or the other?

A. That's right.

Q. What happened between then and the time of the creation of the number two trust that taxes suddenly loomed up so important and became a decisive factor?

A. Well, the first problem that came up, the first discussion we had was when my attorney called me and told me that because of some decision the in-

(Testimony of Roy Eaton.)

come which belonged to the trust might be taxable to me, and I couldn't ever receive any of that income. I didn't have any control over it or a thing, and I wouldn't have had the money to pay the taxes. It would have been ruinous if that had happened, and I was very much concerned about it.

Q. Then when you found out you might have to pay a tax on that income you reached the conclusion that you couldn't possibly operate under that method of doing business?

A. Not if that was the case.

Q. Why wasn't that circumstance involved when you created the number one trust?

A. I didn't know anything about the tax situation. It hadn't come up.

Q. Were you assuming that the number one trust was going [47] to pay the tax then?

A. I don't know what I was assuming, because the question of taxes hadn't come up at all. I was interested, as I say, in protecting my family's interest in case something happened to me, and my attorneys advised me that this was the best way to do it, and it seemed like a very logical way to do it, and we went ahead and did it. The question of taxes didn't come into it at all.

Q. Would you have created the number one trust if you had thought the taxes had to be paid by you?

A. No, of course, I wouldn't have.

Q. Then when you created it you assumed that income was not going to be taxable to you, is that correct?

(Testimony of Roy Eaton.)

A. I don't think I assumed anything about taxes. As I say, the question of taxes didn't come up.

Q. With whom did you consult, with what attorneys did you consult concerning the creation of that trust?      A. With what attorneys?

Q. Yes.

A. I consulted with the firm of Smith, Wild, Beebe and Cades.

Q. Your present counsel in this proceeding?

A. That's right.

Q. You mentioned a Mr. Johnson and a Mr. Prock who were also general partners under the terms of the partnership [48] agreement dated September 30, 1942?      A. Yes, sir.

Q. Exhibit 6 in this proceeding?      A. Yes.

Q. How was the compensation of Mr. Johnson and Mr. Prock, how was their distributive share of partnership income to be determined?

A. Well, until such time as they were devoting their full time to the business.

Q. Yes.

A. Their percentage of the profits which they were to receive was to be restricted. Now just exactly how that was done, I don't remember.

Q. Well, I see a clause in here which I will read to you to refresh your recollection. (Reading): "Provided"—this is reading from page four of Exhibit 6. "Provided, however, that general partners Charles P. Johnson and/or Walter L. Prock, Jr., shall only be entitled to such amounts of the net profits of the business during any period in which the business of the partnership is not the principal

(Testimony of Roy Eaton.)

activity of said partners, a sum in excess of 12% per annum of the amount of said general partners' capital and interest." In other words, were you restricting their profits to 12% of their capital investment when they were not working in the [49] business?

A. I guess if that is what it says, that is what it was.

Q. Why should you so restrict their profits?

A. Well, because one of the things that I was interested in was having them become active in the business just as soon as they got out of the service, and I think they were so interested, too.

Q. But weren't they entitled to a fair return on their capital even if they were not working there?

A. Well, I think 12% would be a pretty fair return.

Q. You think 12% would be a pretty fair return on capital invested in the business?

A. Yes, sir.

Q. Still on the same subject of Mr. Prock and Mr. Johnson, I believe you purchased their interest some time in 1946, is that correct?

A. Yes, sir.

Q. At the time you purchased those interests did you pay for them the book value of the interests?

A. Yes, sir, we had a special audit made to determine that.

Q. Was the franchise carried as an asset on the books?

A. No, sir.

Q. Was good will carried on the books?

A. I don't believe so.

(Testimony of Roy Eaton.)

Q. Who were these people who bought the business in 1946?

A. It was a Mr. Hal C. Lundberg, Mr. Harry Leong and Mr. [50] K. J. Luke.

Q. When did you start to negotiate with them for the sale of the business?

A. I believe it was in August.

Q. At that time was the franchise to bottle these three beverages, Nehi, Par-T-Pak and Royal Crown Cola standing in your name?      A. Yes, sir.

Q. And when you sold the business did the buyer pay \$135,000 approximately for that franchise?

A. No, sir.

Q. For the surrender of the franchise so that they could receive the franchise from the company?

A. Franchises cannot be bought and sold. They paid that for the good will of the business——

Q. For the good will of the business, but the good will was represented more or less by the franchise, was it not? There could be no good will without the franchise, let's put it that way.

A. That is true, I think; yes.

Q. The franchise stood in your name at that time?      A. Yes, sir.

Q. And back in June, on June 30th when you bought the interest of Mr. Johnson and Mr. Prock, when you bought their partnership interests, you made no payment to them for good [51] will?

A. I believe the basis under which any interest in the partnership could be bought and sold was covered in the terms of the partnership agreement, and I think that was carried out absolutely. I think

(Testimony of Roy Eaton.)

that was all covered at the time the partnership papers were drawn up, so that in the event any one of the partners wanted to buy or sell, or in case of death of any one of the partners, I think all those things were covered in that agreement. They were carried out.

Q. That is, you made no payment for good will or the franchise to these partners that you bought out at that time?

A. I guess not. I mean as business it wasn't reflected in the books. It was done in accordance with the partnership agreement.

Q. The franchise was in your name and not in the partnership name, I suppose, wasn't it?

A. No, sir, the franchise was in the name of Johnson, Prock and Eaton.

Q. Johnson, Prock and Eaton?

A. Yes, sir, at the time, as long as they were in the partnership. That was a very important part of the whole set up.

Q. And after they left the partnership—— [52]

A. Then it automatically came in my name.

Q. At the beginning of your testimony you were discussing your motives or reasons for setting up this partnership, and I believe you stated you were afraid that something might happen to you.

A. That's right.

Q. And for that reason you created the partnership to take in other men so the franchise would not be held in your name alone, is that correct?

A. Yes, sir.

(Testimony of Roy Eaton.)

Q. That does not explain your reason for taking the trust into the partnership, does it?

A. Yes, sir, it does, because neither Mr. Prock nor Mr. Johnson had had any experience in the general management of a business. They had had not too much financial experience. Mr. Johnson was a bookkeeper, an office man. Mr. Prock was a salesman and had quite some experience in the selling field, and one of the primary reasons of the creation of the trust to become a partner was so that they would be there to advise and have a real reason and be required to be active in that business in case anything happened to me. And they were active before, as far as that goes, and I could educate them. Also there was the problem of Mr. Johnson and Mr. Prock being in the service, and while they were stationed here at that time, they might be moved away from here at [53] any time.

Q. Then you say that your purpose in taking the trust in was to get some experienced management personnel that could take over the management of the business in the event that you or Mr. Prock or Mr. Johnson were not available, is that it?

A. Yes.

The Court: I don't quite understand that. Do you mean officers of the Bishop Trust Company?

The Witness: Well, yes, sir. They certainly were very familiar with business conditions here in the Territory in the operation of the business. Before the trust was created I went down and talked with them, and they pointed out to me some of the busi-



(Testimony of Roy Eaton.)

nesses that they did have a finger in and were assisting in the management of, and so forth. I talked to them about what their charges would be and everything of that kind, and just exactly what would happen in case something happened to me, what they would do, and that was the reason that we got them into the picture, and it was felt advisable that they should be in the picture in case anything happened to me.

The Court: It is your testimony that you established this trust in order that the trustee would be in a position to enter into the actual management of your business if something happened to you? [54]

A. And through advising assist in it, yes, sir.

The Court: You could have done the same thing if you wanted by a testamentary trust, couldn't you?

The Witness: I don't know what that is.

The Court: One provided by your will.

The Witness: Well, I don't know. We discussed it. As I remember, the Nehi Corporation said something about an executor, but they wouldn't have known much about the business, and it would have been more difficult for them to do anything about it. We discussed that at quite some length before we went into it.

Q. (By Mr. Nyquist): Well, Mr. Eaton, on your death your 60% interest in the business would go to your executor——

A. I beg your pardon?

Q. In the event of your death your 60% interest

(Testimony of Roy Eaton.)

in the business would pass to your executor for him to dispose of pursuant to your will, would it not?

A. Yes, sir, I imagine it would.

Q. And that 60% would still be the controlling interest in the business, would it not?

A. Yes, and under the terms of my will the Bishop Trust Company was to be the executor of my estate, too, which would give them a further interest in the thing, for the protection of my family.

Q. But the Bishop Trust Company as trustee of either of [55] these trusts would have no control over the management and operation of the business either before or after your death, would it?

A. I think they very definitely would. I think if anybody mismanaged or did anything in that business that they felt was not sound business practice, I think they were very definitely in a position to step in and have their say on the matter. I think they could do it legally. It was certainly my understanding that they could.

Q. If that is the case, why did you put a provision in the trust indenture relieving them from responsibility from your acts that you did or consented to?

A. Well, I am not a lawyer, and there are several things in that trust which I think are required by the law under which the thing was created, and I read the thing over, of course, before we went into it, but I was advised that that would accomplish what I was interested in accomplishing and was the best way to accomplish it.

(Testimony of Roy Eaton.)

Mr. Wild: Might I just ask for my own information what page of the trust instrument counsel was referring to?

Mr. Nyquist: I haven't been able to locate it.

Mr. Wild: I haven't either.

Mr. Nyquist: It may be in the partnership agreement.

The Court: I thought the question was directed to the fact that the grantor had a control over investments. I [56] thought the question was directed to that.

Mr. Cades: If your Honor please, I do not believe that the provision referred to exist in the trust agreement. There is a provision that does relieve the trustee of liability for any loss resulting to the trustee but retaining any property in the trust that was given to the trust originally at the time of the creation of the trust.

The Court: I don't know what the form was, but the way it has been stated is that the corpus of the trust was \$15,000.

Mr. Cades: Yes, sir.

The Court: Which would be money, and the trustee with the money buys an interest in the operating business. I don't know whether that is the form it took or whether in fact it was a grant of an interest in the operation of the business. I don't think it is of too much consequence.

Mr. Cades: It has been stipulated and testified to it was in cash which was directed to be used and was used for the purpose of purchasing the interest.

(Testimony of Roy Eaton.)

Mr. Nyquist: I read to you from paragraph K on page 7 of the trust instrument. (Reading): "The trustee may rely upon auditors' reports of the business or partnership known as the Nehi Beverage Company of Hawaii, and shall not be required to make any independent investigation into its affairs or accounts, and the trustee shall not be [57] answerable or accountable for any loss or damage resulting from any error of judgment or otherwise except through its own gross negligence or wilful default. Nor shall the trustee be answerable or accountable for any loss or damage resulting from any act consented to by the settlor, or for any loss or damage resulting from any investment in or loan or advance to the partnership known as the Nehi Beverage Company of Hawaii."

Q. (By Mr. Nyquist): With that provision in the instrument the trustee was empowered to rely upon your management of the business, was he not?

A. Well, it has been my experience in dealing with most financial institutions that they protect themselves pretty well in any dealings, and I imagine that was something required by them. I don't know.

Q. In other words, the trustee assumed no responsibility for any management of the business?

A. I don't think they would. I think they had gone as far as they could go in that.

Q. After the number one trust had sold its interest in the business to the number two trust for

(Testimony of Roy Eaton.)

Q. \$15,000 what did the number one trust do with that \$15,000 that it received?

A. I believe they loaned it to the partnership.

Q. The partnership, the Nehi Beverage Company, the partnership we are talking about [58] here?

A. That's right.

Q. And did the number one trust make other investments?

A. I believe they did.

Q. Did the trustee consult with you before making such other investments?

A. The procedure of the trustee right along has been to make a recommendation of what they thought should be done, and without exception they have followed that recommendation.

Q. You mean they have made a recommendation and you have merely approved their recommendation, is that it?

A. That's right. That is just as a matter of form.

Q. You spoke about your attorneys calling you and informing you of some new court decision that might make the income of the number one trust taxable to you. Was that the same firm of attorneys you testified to that prepared the trust instrument for the number one trust?

A. Yes, sir.

Q. And they also drew the number two trust instrument for you?

A. Yes, sir.

Q. Did you have any other counsel than this one firm you mentioned?

A. No, sir.

Q. Who made the decisions concerning the business, the [59] policies?

A. I was the general manager of the business

(Testimony of Roy Eaton.)

and took charge and assumed authority for all the detailed operations of the business. Any questions of policy and that sort of thing that were thought questionable I took up with the trust company.

Mr. Nyquist: I have no further questions.

### Redirect Examination

By Mr. Wild:

Q. You testified that after you had purchased the interest of the other two general partners you got the franchise in your own name?

A. Yes, sir.

Q. Who were you holding it for?

A. For the partnership.

Q. And this loan that was made by trust number one to the partnership, which counsel just asked you about, was that repaid by the partnership?

A. Yes, sir; and interest payments were made regularly.

Q. And that was paid to the trustee of trust number one?           A. That's right, yes, sir.

Mr. Wild: No further questions.

### Recross-Examination

By Mr. Nyquist:

Q. You stated that after you purchased the interest of [60] Mr. Johnson and Mr. Prock and the franchise was reissued in your name you were holding it for the partnership. Did you execute any written document to that effect?

(Testimony of Roy Eaton.)

A. No, sir; there were never any documents before about who—never any question about it.

Q. There never have been any documents that you were holding the franchise for the partnership either before or after that sale? A. No, sir.

Mr. Cades: If your Honor please, I think that is a matter of legal conclusion and the documents in the stipulation show that all the rights, privileges and so forth of the business formerly carried on by Mr. Eaton were carried on by the partnership by the bill of sale. We can't expect the witness to understand the law involved.

The Court: Is that all, Mr. Nyquist?

Mr. Nyquist: That's all, your Honor.

The Court: Is that all?

Mr. Wild: Yes, your Honor.

The Court: Just step down.

(The witness was excused.)

The Court: I am going to take a short recess.

(Recess.)

Mr. Wild: Mr. Prock, will you take the [61] stand?

WALTER PROCK, JR.

called as a witness in behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: State your name and address for the record, please.

The Witness: Walter Prock, Jr.

(Testimony of Walter Prock, Jr.)

The Clerk: Spell your last name, please.

The Witness: P-r-o-c-k. 5228 Apo Drive, Honolulu.

Direct Examination

By Mr. Wild:

Q. Mr. Prock, are you Walter Prock, Jr., that was formerly a general partner in the special partnership of Nehi Beverage Company of Hawaii?

A. I am.

Q. Are you acquainted with Mr. Eaton?

A. I am.

Q. Who preceded you on the witness stand?

A. Yes.

Q. Who was the third general partner?

A. Charles P. Johnson.

Q. How long have you known Mr. Johnson?

A. About 27 years.

Q. Where is he at present, if you know?

A. In Los Angeles.

Q. When did you first meet Mr. Eaton? [62]

A. Shortly after his arrival in Hawaii. I believe he came in the early part of 1940, between then and the month of June, the opening of the plant. I met him and solicited his insurance account. I was in the general insurance business here.

Q. And what is your special line of business over all? Is it of the selling or office type of business or what? A. I am a salesman.

Q. You were a salesman? A. Yes.

Q. Had you had any interest in the Nehi Corporation franchise for Hawaii?



(Testimony of Walter Prock, Jr.)

A. Yes, I had.

Q. Will you please state briefly what that was?

A. In the year 1939 on a trip to the mainland I became interested in starting a business in Hawaii, and the Nehi Beverage franchise appealed to me, and I made inquiries about it in Oklahoma City and talked with my good friend, Charles Johnson, about the possibility of our going into this business together in Hawaii. Neither of us had much capital and we were both to see what we could do about getting capital to put us in business. I wrote the Nehi Company and it was suggested that I contact Mr. George Silver, the West Coast manager of Nehi and talk to him about my problem, since Hawaii came under his jurisdiction. This I did, and [63] he outlined to me the capital requirements to open a plant in Hawaii.

Q. Then when Mr. Eaton came down here you say you made a contact with him to sell insurance?

A. Yes.

Q. Did you get to know Mr. Eaton quite well?

A. Very well.

Q. Was there any discussion started about the possibility of your getting into the Nehi Company of Hawaii, the Nehi distributor of Hawaii?

A. In the early part of 1940?

Q. Yes.

A. I have no clear recollection of discussing it at that time.

Q. Well, when was the first time that you had

(Testimony of Walter Prock, Jr.)

a discussion with him about the possibility of getting into and working in the business?

A. Sometime after Mr. Johnson and I had been called into the service, and it undoubtedly came up in Mr. Eaton's home. We spent several evenings a week, quite often, at his home after our families had been evacuated.

Q. What was Mr. Johnson doing at that time prior to his going into the service?

A. He was office manager for the Nehi Beverage Company. [64]

Q. Working for Mr. Eaton's business?

A. That's right.

Q. Did he continue to render services before he became a partner and after he was called into the service here?           A. Yes, sir, he did.

Q. And what were those services?

A. Supervision of the keeping of the records insofar as he had the time to do so, generally on weekends and nights.

Q. I see, but at that time were you able to give any of your time and attention to active participation in the business?

A. Until I became a partner I had no official connections other than my interest in the business. I gave no time then.

Q. After you became a general partner in the business what was your participation, if any, in the business? What were you supposed to do?

A. After I was out of the service?

Q. Yes.

(Testimony of Walter Prock, Jr.)

A. My title was sales manager. It was my job to sell the beverage.

Q. But while you were in the service was it possible for you to attend to that?

A. No, it was not.

Q. I see, so that during the period of time that you were [65] in service before you got out, you stated a moment ago that you and Mr. Johnson would call at Mr. Eaton's home on evenings and sometimes weekends. At that time did you participate in discussions concerning the operation of the business?      A. Yes, I did.

Q. Now in your discussions concerning the operations of the business did you yourself take up anything with the special partner during the period of time you were in the army?

A. No, I did not.

Q. And why was that?

A. Well, Mr. Johnson and I were new partners, you might say, and we were quite satisfied with the way Mr. Eaton, who was the majority partner and general manager of the business, was conducting the business. He had established his relationships with the trust special partner, and we saw no reason to change that in any way.

Q. Well, wasn't there another element there? Where were you during the working hours of the day?

A. Well, I was in the Dillingham Building for four years.

Q. And you were occupied there full time?

(Testimony of Walter Prock, Jr.)

A. I was.

Q. On other governmental matters?

A. That's right. [66]

Q. Did you discuss with the other two general partners various matters that would be discussed with the special partner?      A. Yes, we did.

Q. And how frequently would that occur?

Mr. Nyquist: Objection, your Honor. I move that last be stricken. He has testified he was not present at any of the discussions with the special partner, so he is not in a position to testify of his own knowledge whether he discussed it with the general partners, matters that had been discussed with the general partners.

Mr. Wild: No, I said matters to be discussed.

Mr. Nyquist: Well, that is different then.

The Court: Would you repeat the question now?

(The question was read by the reporter.)

The Court: Now what period was this, after you got out of the service?

The Witness: I am referring to the period I was in the service at this point. Is that not correct?

Mr. Wild: Yes, I was.

The Witness: While I was an officer in the United States Army.

The Court: Incidentally, when did you become a partner in this business?

The Witness: September 30, 1942. That was the effective date. [67]

Q. (By Mr. Wild): Now after you got out of service did you participate in some discussions with

(Testimony of Walter Prock, Jr.)

the special partner?           A. No, I did not.

Q. You did not?           A. No, sir.

Q. But did you, as prior thereto, discuss those matters with the other general partners before they were taken up with the special partner?

Mr. Nyquist: Objection to that. your Honor. He was not present. He does not know what was taken up.

Mr. Wild: No, before they were to be taken up.

Mr. Nyquist: That question carries an implication that they were taken up, and there has been no testimony on that point.

The Court: Overrule the objection.

A. Yes, I did.

Q. When did you get out of the service, by the way?           A. December, 1945.

Q. And shortly thereafter you desired to enter into some other line of business, did you?

Mr. Nyquist: Your Honor, I object to the leading nature of this line of questions ask that counsel refrain from leading the witness.

Mr. Wild: I will withdraw the question. [68]

Q. (By Mr. Wild): What if anything happened to your interest in the partnership after you got out of the service?

A. Immediately that I got out of the service I went to work for the Nehi Beverage Company.

Q. Yes, then after that what did you do?

A. I was sales manager. My job was to sell the beverage.

Q. You were sales manager, and during that

(Testimony of Walter Prock, Jr.)

period of time you operated as sales manager of the partnership?      A. That is correct.

Q. And for how long a period were you sales manager?      A. Eight to nine months.

Q. And then you terminated your activities as sales manager for the partnership?      A. I did.

Q. And you withdrew from the partnership?  
A. I did.

Q. And about when was that, if you recollect?  
A. Sometime in July of 1946, I think.

Q. I see. When you first became a partner in the partnership was there any general discussion concerning in whose name the franchise from Nehi would be held for the partnership?

A. Yes, there was.

Q. And what was that discussion?

A. Mr. Johnson and I knew that the franchises had to be [69] in the name of individuals, and along with Mr. Eaton's thoughts of providing for the event of his death that Mr. Johnson and I would continue the operation of the business and try to take care of his family problems along with our own, and it was agreed that by putting the franchises in the names of the three partners, in the event of the death of any one of the partners the other two could continue the operations quite satisfactorily.

Mr. Wild: You may cross-examine.

(Testimony of Walter Prock, Jr.)

Cross-Examination

By Mr. Nyquist:

Q. Over the period of years that the business was operated up to the time you sold your interest, the franchise had increased in value, had it not?

A. The franchise is not something you can sell, if you are speaking of money value.

Q. Let's word the question this way then: Over that period of time the Nehi Beverage Company of Hawaii had built up a relatively prosperous business, had it not?      A. That is correct.

Q. And this was done through advertising and sales effort, was it not?      A. It was.

Q. Therefore, the franchise was a valuable asset to whoever owned it, was it not? [70]

A. It was.

Q. At the time you sold your interest in the partnership you received an amount equal to the book value of the assets, did you not? The book value of your proportionate share of the assets, I should have said.

A. I believe that is correct.

Q. And that book value did not include any value for good will or franchise, did it?

A. That's right, it did not.

Q. So you received no payment by way of payment for any increase in good will or franchise value, did you?      A. I did not.

Q. The franchise stood in your name as well as the names of the other two general partners?

(Testimony of Walter Prock, Jr.)

A. It did.

Q. But was that merely done as a matter of convenience in case of the death of Roy Eaton so that you would be able to continue the business in the event of the death of Roy Eaton?

A. No. It was done so that—Johnson and I made a decision that when we were out of the service we would be in the bottling business and make that our full time business, and we felt that it was certainly protecting our interest while we were in the service to have our names on that [71] franchise.

Q. I see.

A. Because, as a matter of fact, on the death of Mr. Eaton, Johnson and I would then own the franchise.

Q. But when you sold out you received nothing to compensate you for any interest you might have in the franchise, is that correct?

A. I believe it so states in the agreement.

The Court: Is the franchise an exhibit?

Mr. Wild: No, your Honor, it is not.

Mr. Cades: We do have copies available that we could submit.

The Court: I was wondering if it is a matter that runs from year to year. How does it run?

The Witness: It is a continuous instrument.

Mr. Wild: It is a continuous franchise, as I understand it.

The Court: But subject to withdrawal at the will of the Nehi Company, I suppose.



(Testimony of Walter Prock, Jr.)

Mr. Cades: That is correct.

Mr. Wild: It can be cancelled. We might as well put it in, your Honor, photostatic copies of them.

The Court: I don't care for all that. I was just trying to get some idea about it as the examination proceeds.

Mr. Wild: We might put in one, your Honor, as [72] illustrative of the others. The particular contract itself was not a point in issue. The particulars of the contract, or franchise, were not in issue in the cause.

The Court: Well, I am not interested in it either, Mr. Wild, but just exhibits in the nature of a right to operate.

Mr. Wild: It could be cancelled out.

The Court: Under this name and to acquire the ingredients and what not, and whether that is just at the will of the granting company. Now that is the way a lot of these franchises are, like a lot of these automobile ones. They can be taken away in a moment, but as a matter of practice they never are.

Mr. Cades: If your Honor would like, I could read a section directed to that.

Mr. Nyquist: If part of the instrument is going in, I would like to have the whole instrument in the record.

The Court: Well, I suppose you have a right to that. Well, let's pass it and you people look into it and see if it is needed.

(Testimony of Walter Prock, Jr.)

Mr. Cades: Your Honor, I would like to read this in.

The Court: Then the whole instrument will have to go in.

Mr. Cades: Yes, then we will offer the whole instrument. It says, (reading) "This license is of a personal [73] nature and may be transferred and assigned by the bottler only upon first obtaining written consent of the company and cannot under any circumstances be transferred to a corporation. It is further understood that said license should exist and continue only so long as the sale of Par-T-Pak beverages throughout such Territory is maintained in such volume and manner as is satisfactory and profitable to the bottler and to the company. It is therefore agreed that this license shall continue only at the unrestricted will of the parties thereto and may be terminated by either through service of written or personal notice upon the other."

The Court: Incidentally, does that purport to be an exclusive license for the Territory here?

Mr. Wild: Yes, your Honor.

The Court: Or could they grant a similar one to someone else?

Mr. Cades: No, this is exclusive. It is supposed to be exclusive. We do not have sufficient copies here to submit in evidence, but I would like to submit two. I would like to offer at this time photostatic copy of Par-T-Pak licensing contract granted to Roy Eaton dated March 18, 1940, and

(Testimony of Walter Prock, Jr.)

Par-T-Pak licensing contract granted to Roy Eaton, Charles P. Johnson and Walter L. Prock, Jr., dated October 6, 1942, with the stipulation that there were [74] two other similar, exactly similar franchises in the same names and at the same dates, covering Nehi Beverages and Royal Crown Cola. Is that agreeable?

Mr. Nyquist: If counsel can assure me that the terms of the franchises for the other two beverages were the same as the terms of this, I will so stipulate.

Mr. Wild: The special partner just tells me that they are different.

Mr. Nyquist: Your Honor, in view of the possibility that there are differences in the contract, I would agree with Mr. Cades if he wishes to put each of the contracts in, but I would not stipulate that the others were similar.

Mr. Cades: Then we are unable to furnish copies of these.

Mr. Nyquist: They can be put in with permission to withdraw for the purpose of making copies.

The Court: Put them in one at a time.

Mr. Cades: First I would like to offer Nehi licensing franchise granted to Roy Eaton granted March 18, 1940.

The Clerk: Exhibit 52.

The Court: It will be received.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 52.) [75]

(Testimony of Walter Prock, Jr.)

Mr. Cades: Royal Crown Cola agreement granted to Roy Eaton dated March 18, 1940.

The Clerk: Exhibit 53.

The Court: It will be received in evidence.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 53.)

Mr. Cades: Par-T-Pak licensing contract granted to Roy Eaton dated March 18, 1940.

The Clerk: Exhibit 54.

The Court: It will be received in evidence.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 54.)

Mr. Cades: Nehi licensing franchise granted to Roy Eaton, Charles Johnson and Walter Prock, Jr., dated October 6, 1942.

The Clerk: Exhibit 55.

The Court: It will be received in evidence.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 55.)

Mr. Cades: Royal Crown agreement granted to Roy Eaton, Charles P. Johnson and Walter L. Prock, Jr., dated October 6, 1942.

The Clerk: Exhibit 56.

The Court: It will be received in evidence. [76]

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 56.)

(Testimony of Walter Prock, Jr.)

Mr. Cades: Par-T-Pak licensing contract granted to Roy Eaton, Charles P. Johnson and Walter L. Prock, Jr., dated October 6, 1942.

The Clerk: Exhibit 57.

The Court: It will be received in evidence.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 57.)

The Court: Go ahead with the witness.

Q. (By Mr. Nyquist): Will you answer the question?

A. What was the question again?

Mr. Nyquist: Will you read the question, Mr. Reporter?

(The question and answer were read by the reporter as follows):

“Q. But when you sold out you received nothing to compensate you for any interest you might have in the franchise, is that correct?”

“A. I believe it so states in the agreement.”

Q. (By Mr. Nyquist): Will you answer the question directly? You said you believe it so states in the agreement. Do you believe that you received nothing to compensate you for any interest you might have in the franchise or good will of the business? [77] A. Yes.

The Court: Incidentally, what did you receive?

The Witness: My percentage.

(Testimony of Walter Prock, Jr.)

The Court: How much in dollars? Did you get it in cash?

The Witness: I had a check.

The Court: For how much?

The Witness: \$2,050.00, I believe.

The Court: How much did you put in to start with?

The Witness: \$2,500.00.

The Court: Didn't you get back as much as you put in?

The Witness: I did not.

The Court: Why was that? I thought the company was quite successful.

The Witness: Well, in 1946, business was dropping off at an alarming rate. The services had left the islands and it was not booming as it had previously.

Q. (By Mr. Nyquist): Did you ever have any agreement either written or oral with Mr. Eaton concerning the franchise, as to who would be entitled to any profits that might result from its increase in value?

A. I do not recall having any.

Mr. Nyquist: No further questions.

Mr. Wild: No redirect.

The Court: You are excused.

(The witness was excused.) [78]

## EDWIN BENNER, JR.

called as a witness in behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: State your name and address, please, for the record.

The Witness: Edwin Benner, Jr.

The Clerk: How do you spell your last name?

The Witness: B-e-n-n-e-r. I live at 4473 Aukai Street, Honolulu, T. H.

## Direct Examination

By Mr. Wild:

Q. What is your present position, Mr. Benner?

A. I am Vice-President and Secretary of the Bishop Trust Company, Limited, and in charge of the trust department.

Q. How long have you been in charge of the trust department?

A. Since the spring of 1946.

Q. Prior to that time what was your position?

A. I was a trust officer of Bishop Trust Company.

Q. And for how long?

A. I joined the trust company in 1934, and I have been in the Trust department at all times.

Q. I take it that your active business life, so far as your own participation is concerned since 1931 has been with Bishop Trust Company, Limited?

A. That's right.

Q. What was the Bishop Trust Company's capital in 1940 and 1941, if you recollect? [79]

(Testimony of Edwin Benner, Jr.)

A. It was approximately \$1,200,000, with a surplus of a like amount.

Q. And what type of business did it conduct at that time?

A. It conducted a trust company business here in the Territory. Banks do not do trust business and trust companies do not do banking business, and so during that entire time it was operated strictly as a professional fiduciary, with side issues such as insurance, real estate sales and brokerage, but its main business is administration of estates, trust, guardianships, agency accounts, acting as corporate trustee of all sorts and types, transfer agents, that type of business.

Q. In one fiduciary capacity or another do you have as part of your duties the management of various types of properties?

A. Yes, indeed.

Q. You might explain that.

A. The normal trust or estate that we handle, of course, consists primarily of stocks and bonds or ownerships in real estate, but very often we have the problem of the administration of proprietorships or own the control or total outstanding shares of businesses, and these change year for year as the estates are probated and closed out. Some of our trusts have operated business for many years, though. I can give you a few examples.

Q. I wish you would give me some examples of businesses that you have operated in a fiduciary capacity.



(Testimony of Edwin Benner, Jr.)

A. We have just closed up an estate that has as its principal [80] asset the controlling interest in a small structural steel company here in town with business operating right straight along. Our officer in charge was necessarily right on the job sometimes in the office, and so forth. We do own the controlling interest, through one of our fiduciary accounts, the largest specialty store, McInerny, Limited, that does \$3,000,000 of business each year. I personally am secretary-treasurer of that company and sign all checks, incidentally. I received daily statements of its sales volume by department all the way through. We have a very active part.

Another business we are handling right now is the Honolulu Tile Business owned by the Worthington Estate. When Mr. Worthington passed away—it was his own business, and it was necessary that we step in and operate it, and not being familiar with that business we had some difficulty for several months and lost money until we were able to get things organized properly with an efficient manager, and are now pulling it out of the red and are doing very well. Our men in charge of that particular estate consult with me every week about their problems that they have there. They are on the job right along, too.

We have handled dairies; we have handled ranches; we have handled ice cream business. In 1944 and 1945 we administered the estate of Frances Wadsworth on the island of Maui. Mrs. Wadsworth at the time of her death was owner of [81] the

(Testimony of Edwin Benner, Jr.)

Maui Soda and Ice Works. That business owned the Coca-Cola franchise on the island of Maui. I made 18 trips to Maui during the year 1945 in connection with that business, taking a very active part in it.

The Court: Is that as executor?

The Witness: We were temporary administrators to start with, the license was issued in our name at first, and then to us as executor.

The Court: And what do you do there, try to liquidate the company as quickly as possible?

The Witness: We operated it just about a year. In 1944 and 1945 were boom years here in the islands because of the tremendous number of service people here, and bottling companies and business of that nature did a tremendous business, and rather than a liquidation program we continued to operate so that we would have a going business to sell to someone. We negotiated a sale eventually to a man who had been the West Coast agent for Coca-Cola. He was able to secure the consent of the Coca-Cola Company.

Mr. Nyquist: Objection, your Honor. I don't think there is any occasion to go into other bottling company cases.

The Court: We don't need to go any further on that.

Q. (By Mr. Wild): What other type of business?

A. I just jotted down a few, auto sales——

The Court: I think that is enough.

(Testimony of Edwin Benner, Jr.)

The Witness: We have the Ford agency in Hilo right [82] now that we are administrating.

Q. (By Mr. Wild): What, if anything, did you have to do with advising concerning policies, management, and so forth, of the Nehi Beverage Company of Hawaii?

A. Mr. White, who was the head of the Trust department in 1942, had his desk adjacent to mine. He handled my accounts when I was out of the office and I handled his. I eventually succeeded to his position. The handling of accounts went on even if the individual were here in town, not only when he was away on vacation, so when new accounts came in we met the parties involved as soon as possible so that we could carry on intelligently on any discussions that might come up. I believe I met Mr. Eaton at the time the document was signed, as I am one of the co-signers for the trust company. I can't put my finger on the exact date, but I met him at that time. I recall very definitely having numerous discussions with Mr. Eaton sitting at Mr. White's desk. It was just necessary to shift my chair around so I could join in with their conversations. And also with Mr. Eaton individually while Mr. White was not available.

These conversations were primarily about the need of retaining capital in the business due to the tremendous growth that this type of business was going through, and the advisability of our permitting a retention of earnings in the business so as to have a larger working capital. We [83] real-

(Testimony of Edwin Benner, Jr.)

ized that the franchise called for specifically serving this area adequately, and it meant that we had, the business had to grow as the demand required, and consequently we felt that it was the proper business venture, proper business to retain the money as was needed in the business for its growth, the purchase of new trucks, additional equipment for washing and bottling, inventorying. I know that accounts receivable, from my own knowledge, increased during that period, through the larger number of people being served. Our only insistence was that we be permitted to withdraw from the business sufficient to pay the taxes that were payable from the trust on account of its share of the income. That was handled by either telephone request to Mr. Eaton who would personally drop by with the check and would talk with us as to how business was going and our ideas of how long the army and navy was going to stay here, and developments of that nature.

Q. How often would you receive accounts of the business?

A. We received annual financial statements. We did not receive any interim accounts in writing. Mr. Eaton reported verbally as to how business was going, but we received these financial statements each year, and it was from these statements that we posted our books as to the distributive share of the income that we were entitled to receive. In other words, on the books of the trust on the ledger we put the journal entries that set up the amount dis-

(Testimony of Edwin Benner, Jr.)

tributable to us, and [84] then on the other side we would set up an amount that was being retained in the business as an account receivable by us from the business, in other words, the undistributed profit. We had to get it on our books because we were entitled to annual commissions, and it was required that we prepare annual accountings.

Q. How closely did you follow the operations of this Nehi Beverage Company of Hawaii?

A. Well, my contact in the detailed operations was more as to the growth of the business and the necessity for its growth, and what type of machinery was necessary to be purchased in order to permit the continued growth.

Q. Were you informed concerning the type of operations, the things that were done?

A. Yes, indeed.

Q. How frequently were inquiries made on that score?

A. Well, Mr. Eaton, I imagine, was in our office possibly every month. It is rather hard to recall, Mr. Wild, but frequently; definitely once every three months when he would bring in a check to help us pay our taxes. But he was a busy man and he didn't get uptown every day.

Q. Now at the time of the change over from trust number one to trust number two, did you participate at all in any of those transactions?

A. I believe I signed the trust instrument also. I did not [85] participate in any of the discussions.

(Testimony of Edwin Benner, Jr.)

Mr. White did. I knew about it because he talked with me for the trust company.

Q. You didn't participate in that?

A. No, but he and I made the joint decision on whatever was done, but I didn't talk to Mr. Eaton personally.

Q. That is at that time?

A. That's right.

Q. You advised with Mr. White as to what attitude the trust company had as special partner?

A. Yes, no one of us officers, even the senior trust officer, would take a step as receiving a new trust without consulting with some other trust officer or the management, which would be Mr. Damon at that time.

Q. Now when it came to the time of the offer to purchase the whole of the partnership business, were you personally consulted at that time?

A. I was. I had just returned——

Q. Do you recollect about what time of the year that was?

A. I definitely do. I had just returned from my first trip to the mainland after the war. I had come back the latter part of July. I had just taken over the active full time operation of these trusts. Mr. White had moved into the other position there for a year's temporary work, and I was the one that talked with Mr. Eaton and with Mr. Lundberg and the two Chinese gentlemen who became the eventual buyers. [86] I sat in on the discussions from the very start. I think Mr. Eaton came in and

(Testimony of Edwin Benner, Jr.)

talked to me about it before my meeting Mr. Lundberg or Mr. Luke and the other gentleman, and we had joint conferences and finally boiled things down, and Mr. Cades got into the picture, Mr. Milton Cades.

Q. And at that time were the various problems involved in the sale thoroughly discussed?

A. They were.

Q. And what did you do acting in your capacity as trustee of the trust that owned the special partnership?

A. Well, this partnership interest during 1946 and the latter part of 1945 had given us some concern. We had had some discussion as to the advisability of our continuing in it as business had fallen away. The war was over. The troops had been moved out. In 1946 up through the summer there we had suffered a loss, and I had talked it over with Mr. White before I went away—he with me rather—and in the spring of 1946 and when I came back the same picture existed, and when the opportunity came along for a sale we thought it was a very good thing to consummate and go ahead with. As long as the boom years of the war we felt it was a good business risk for this trust to have, but the picture changed and our ideas changed then too.

Q. So that did you act there in determining that you would join in the sale upon Mr. Eaton's suggestion or your own determination? [87]

A. Well, it is a little hard to say as to that par-

(Testimony of Edwin Benner, Jr.)

ticular sale. We were very much concerned about the interest in the partnership. We felt that it was no longer a suitable trust investment. If business was going to be on the declining side a sale to someone was indicated. We hadn't gotten to the point of actually talking it over with Mr. Eaton. Whether Mr. White did while I was away in the summer, I do not know, but when it came up Mr. Eaton said that there was a party interested, well we were interested, very definitely.

Q. But were you interested though because he told you or directed you to sell?

A. No, not at all. I just tried to tell you that it had given us some concern as an asset to have in a trust, and we were about to do something ourselves, to suggest that he buy us out or do something about getting out of that business. We didn't think it was a proper thing to continue to have in the trust.

Q. Now that sale was consummated, was it not?

A. Yes.

Q. And I believe the stipulation shows the copies of the instrument, the letter of offer, the acceptance and the assignment of the securities for the note.

A. They do. I was present when they were being considered and added as exhibits.

Q. Who at present holds the securities? [88]

A. The Bishop Trust Company does, as pledges.

Q. And for whom are you holding it?

A. They are pledged on notes to Mr. Eaton individually and to the Bishop Trust Company in a



(Testimony of Edwin Benner, Jr.)

fiduciary capacity as trustee. They are these notes and then the stock that the corporation has pledged by the owners of the stock as collateral on these notes, and we hold them in our vault.

Q. Is Mr. Eaton a director or officer or otherwise connected with the Bishop Trust Company, Limited?

A. No, I am the secretary, and I know that he is not a stockholder.

Mr. Wild: No further questions.

#### Cross-Examination

By Mr. Nyquist:

Q. Mr. Benner, you have testified concerning your advising with Mr. Eaton on the management of the business and the advisability of leaving or withdrawing trust profits from the partnership. I believe you mentioned one of the matters you considered was whether the armed forces were likely to remain in Honolulu in sufficient number to make the business continue to be profitable?

A. Yes.

Q. How did things look to you in about 1944 and early 1945 in that respect?

A. I think in June or July, 1944, the peak of the armed [89] forces contingent was here, as far as I have been able to gather at that time and since, both as to army and navy.

Q. But as to the future prospects, how did things look to you?

A. Well, we were still the staging area for the

(Testimony of Edwin Benner, Jr.)

advancement of our troops or navy forces across the Pacific, and while there had been some decline because the closer areas had been taken over, there still was a tremendous amount of business here.

Q. By early 1945 did things look on the decline?

A. Not particularly. The capitulation of Japan was not until the latter part of the summer of 1945, and I think it occurred rather suddenly to most of us. We hadn't expected it.

Q. You spoke about conferring with Mr. Eaton on the advisability of leaving profits in the business. Didn't that discussion really take more the slant of the need of the trust to get a little money out to pay taxes?

A. No, this was an investment, this interest in the partnership was an investment of this trust, and if we could produce more income for that trust, it was our job to do it as long as it was a proper business risk, and we considered the building up of that business so that the profits would be larger under the circumstances existing at that time was a proper business risk for us to take as trustee.

Q. Wasn't that also true of the number one trust?

A. The number one trust had sold its [90] interest.

Q. Yes, but wasn't it your job there to keep the money invested where it was profitably invested?

A. Yes, sure.

Q. And yet you sold that out?

A. Yes, sure.

(Testimony of Edwin Benner, Jr.)

Q. How do you square that away with your duty to the number one trust?

A. Well, the remainder men in both trusts were the same. There was no change. We weren't doing anything to anybody at all for that sale.

Q. What was the reason for making the change, selling the assets from the number one trust to the number two trust?

A. It was agreed in the trust instrument that that is what we would do. I think it sets forth in the number two trust that we were to buy the interest in that partnership.

Q. Yes, but in your capacity as trustee of the number one trust, why did you sell your interest in the profitable partnership?

A. I tried to explain to you that there is no change in beneficial interests in the two trusts. Tax-wise it was going to prove an advantage according to this decision that had been entered since the creation of that first trust.

Q. An advantage to whom?

A. To the Settlor, according to that decision.

Q. You spoke about your decisions to leave money in the [91] business. Did you consider that under the terms of the trust instrument you had the power to force the withdrawal of the profits from the business?

A. I think we could have without any trouble. we got money whenever we wanted it.

Q. Did you, during the period up to the time of the sale of the partnership to the corporation,

(Testimony of Edwin Benner, Jr.)

did you ever draw substantially in excess of what was necessary to pay taxes and administrative expenses of the trust?

A. I think our accounts have been stipulated here, how they were to be, and I didn't refresh my memory on that, sir.

Q. Let's put it this way then: When the time came that the trust would have a tax bill to meet, for example, didn't you usually have to make demand and sometimes repeated demands upon the partnership to get the funds to pay the taxes?

A. We would write a note or telephone, and sometimes if they didn't bring in the check, then a telephone call would go through. I think I testified a while ago Mr. Eaton didn't come uptown very frequently. He was a pretty busy man, and he would like to bring those checks in personally because that gave him another chance to talk with us.

Q. Did you go out to his place of business very often?      A. No, never did.

Q. You have never been to the place of business?

A. No, when I took active charge of this account, we sold [92] it within three months.

Q. Was this the type of business that your company ordinarily would invest trust funds in?

A. No.

Q. Does your company ordinarily insist upon a provision in a trust instrument comparable to the provisions in these trust instruments relieving the trustee of all—saying, (reading) "That the trustee

(Testimony of Edwin Benner, Jr.)

shall not be accountable for any loss or damage, and so forth, resulting from any error of judgment of any kind except through its own negligence," and so forth—"Nor shall the trustee be answerable or accountable for any loss or damage from any act by the Settlor or loss or damage resulting from any loan or advance to the partnership," and so forth. Is that a typical provision in your trust instruments?

A. In instruments that deal with partnerships, yes. In instruments that deal with general assets put into a trust; inter vivos trusts, something like that, we ask for a release clause.

Q. Will you briefly explain to me the clerical mechanics in your office in handling a trust like this, the handling of its accounts and preparation of its tax returns?

A. Well, the books of account are, of course, all kept in our bookkeeping department, and disbursements are made by that department on the written request by requisition where [93] an ok'd bill of the officer in charge of the account. If there are journal entries to be put through, they will be by specific direction from him. Bear in mind we always have a substitute officer who can handle it, and his request is recognized. Accounts are prepared annually by the bookkeeping department, under the supervision of our head bookkeeper. They are typed and proofread and reviewed by the officer in charge and then again by the head of the trust department before they are sent out to the

(Testimony of Edwin Benner, Jr.)

beneficiaries, and they are sent out over the signature of the officer in charge of the account. They have a very careful procedure that must be followed, and it is the responsibility of myself now as being in charge of that department, to see that it is followed, and we do.

Q. And what reports and tax returns, and so forth, are prepared annually?

A. In some cases, and I believe it is true in this one, outside tax counsel is employed. I believe Cameron and Johnson prepared these returns. I am not certain, Mr. Nyquist, on that. We have a good tax department ourselves.

Q. If they did, would their fee be included in the fee you charge the trust?

A. No, we have a separate charge for tax purposes allowed under the statute. Allowances for extraordinary services are permitted. [94]

Q. But would that be included in the fee you would charge the trust?

A. It is shown in the account as a separate fee.

Q. Well, take for example, here is the fiduciary income tax return of the Roy Eaton Trust number two, which is exhibit 43. I see there you show on Schedule H a trustee's fee of \$325. Would that include the cost of the preparation of such tax returns?

A. I can't answer that. I didn't prepare this return, and I can't tell whether he consolidated it or not.

(Testimony of Edwin Benner, Jr.)

Q. Well, is there any amount shown separately for the preparation? A. No.

Q. Would it ordinarily be included in that amount?

A. It ordinarily wouldn't show as part of the trustee's fee.

Q. Well, would you know whether this return was prepared——

A. It was prepared in our office.

Q. It was prepared in your office?

A. That's right.

Q. Then your fee included the cost of preparing that return, would it?

A. No, I can't answer that.

Q. Can you tell me generally then what is included in this \$325 fee?

A. That would be our services agreed upon, our fee for our [95] services as trustee.

Q. That would be all these bookkeeping services, the reports you make? A. That's right.

Q. All the work you do, all these conferences you have, all this business advice? A. Yes.

Q. All included in this \$325 fee?

A. That's right.

Q. Then a large part of the \$325 would be for the clerical work, would it not?

A. No, there isn't very much clerical work, not in these particular ones, no.

Q. Well, do you have any idea how much time you would be spending on the other matters in connection with the trust?

(Testimony of Edwin Benner, Jr.)

A. That was a fee for that particular year. You will find that each year there was a different fee, and probably we were inadequately paid some years and very well paid in others for our time.

Q. But in those returns you didn't spend a large number of days personally on considering the matters of this trust?

A. We spent all the time that seemed required without any qualification whether we were going to make money on the job or not.

Q. You say you advised concerning business activities. Can [96] you tell me any specific advice you gave them?

A. Can I at this time recall some specific advice that I gave Mr. Eaton?

Q. Yes, concerning the management of that business?      A. I am afraid I can't.

Q. Returning again to the matter of the transfer of the assets from the number one trust to the number two trust, the sale of the partnership interest—      A. Yes.

Q. Did you believe that the number one trust had a very favorable position from the tax point of view if it did not have to pay taxes on its income?

A. Yes, it probably did.

Q. Then why did you consent to the sale of the assets to the number two trust? Was it at Mr. Eaton's request?

A. This was in the spring of 1942, February. We then didn't know what was going to happen to the Islands, and I don't think the problem of the



(Testimony of Edwin Benner, Jr.)

taxes, the amount of taxes, dollarwise, was considered by us to be of too great a problem as far as our beneficiary was concerned.

Q. Well, did you have any reason for making the sale?

A. I have stated awhile ago that the beneficiaries of both these trusts were the same people.

Q. Yes, but I am asking whether you had any reason for selling the partnership interest in the number one trust to the [97] number two trust, as trustees of the number one trust?

A. Well, you see, the——

Q. Is your answer that you can't recollect any reason?

A. Possibly something like that. I don't remember the particular discussions on it.

The Court: Wasn't the reason rather obvious why it was done?

The Witness: At Mr. Eaton's request, to set up this new trust, and then that new trust called for the purchase of this. The partnership would have been dissolved if the change hadn't been made.

Q. (By Mr. Nyquist): Why do you say that?

A. Well, if it was going to affect Mr. Eaton in a way that he was going to be taxed on all the income that was going to be distributable to this trust, it was manifestly something that couldn't go on.

Q. Of what concern was it to the number one trust whether the partnership was dissolved?

A. He could dissolve it.

Q. He could dissolve it.

(Testimony of Edwin Benner, Jr.)

A. I think that the articles of partnership showed he could withdraw that, any partner could pull out. We didn't have that franchise.

Q. Would that have been a blow to the number one trust if he [98] had done that?

A. If he did nothing?

Q. If he had dissolved the partnership?

A. We would get back our \$15,000.

Q. But you say he held the franchise personally?

A. For the account of the partnership.

Q. What do you mean for the account of the partnership?

A. No partnership can hold it. It has to be in the names of the individuals.

Q. Was there an agreement that he was holding it for the partnership in trust, any agreement about that?

A. I don't remember seeing any agreement.

Q. Do you recall any oral agreement?

A. Yes, in my conversations with Mr. Eaton——

Q. I am asking you whether you entered into an agreement or you were present when an agreement was made?

A. Not where we sat down and said, "You will do this and you will do that," no.

Q. Did you make investments for the trust, for either trust, other than the investments in the partnership business?

A. Yes, I think the accounts that we have filed here show.

(Testimony of Edwin Benner, Jr.)

Q. Were these investments made after the two trusts got out of the partnership business?

A. Unless I look at the accounts, I cannot answer that.

Q. When you made an investment or selected a security that [99] you thought was a favorable investment, would you secure the approval of Mr. Eaton before making the investment?

A. Yes. May I add a comment there about the policy of the trust company.

Q. No, I think your answer is sufficient.

The Court: I would like to hear it. Yes, make it.

The Witness: We would have secured Mr. Eaton's approval if there had been no requirement for approval. When there are settlors who have set up inter vivos trusts with us, it has been our policy as long as I can recall to propose investments and when the settlor is available to see whether he has any strenuous objections attached to them. We like to carry on in a manner that he is satisfied with. We have in our trust company a very carefully set up investment analysis department. We invest in certain securities that are approved in various trust companies. We work from the Bankers Trust Company list, and there are many securities that are approved, but you may have only one or two that would fit into a particular portfolio, and maybe the settlor doesn't like the name or something like that and we can suggest something else, but we have always made it a

(Testimony of Edwin Benner, Jr.)

policy, Mr. Nyquist, of proposing and asking their approval.

Q. But in this case, in addition to the policy, you regarded yourselves as obliged to do that under the terms of the trust instrument? [100]

A. The trust instrument said we always obtain his consent, so we did.

Q. That was for all the investments that you made? A. Yes, as I recall.

The Court: Is that a usual or unusual provision in these trusts?

The Witness: It is quite frequently found, from my experience, sir.

Q. (By Mr. Nyquist): Did you ever advise Mr. Eaton as to how much salary you thought he should draw from the business? A. No.

Q. Did he inform you as to how much salary he intended to withdraw from the business?

A. I knew what he was getting when the business was in operation in the early years. It was discussed, I mean just by way of conversation. We were advised formally by the partners when the general partners increased his salary to \$1,750. As required, they advised us.

Q. But that was a matter where the decision was made by the general partners? A. Yes.

Q. Or the holder of the majority interest, or among the general partners and you did not participate in the decision?

A. We did not participate in it. We didn't ob-

(Testimony of Edwin Benner, Jr.)

ject to it. We felt that he was earning it and a proper salary for services [101] rendered.

Mr. Nyquist: I have no further questions.

The Court: Anything further?

### Redirect Examination

By Mr. Wild:

Q. Did you consider the salary, did I understand you to say that you considered it an adequate compensation for his services in those times?

A. Yes.

Mr. Wild: No further redirect.

Mr. Nyquist: No further questions.

The Court: All right, step down.

(The witness was excused.)

Mr. Wild: The petitioner rests, your Honor, subject, however, to furnishing the exhibits. We haven't the photostatic copies of the return which give all the figures that have been inquired about, and also the photostatic copies of the franchises. We would like to withdraw those to get other copies made.

The Court: Very well, that may be permitted. Have you anything further?

Mr. Nyquist: Respondent rests, your Honor.

The Court: Well, we will conclude the record so far as taking the testimony is concerned. [102]

[Title of Tax Court and Cause.]

Docket Nos. 24081, 24082

MEMORANDUM FINDINGS OF FACT  
AND OPINION

Successive trusts for the benefit of the petitioner's minor children were created by the husband-petitioner. Under the first trust the income could be used by the trustee for the benefit of the children; under the second it could not be so used. Both were to endure until the youngest child became 25, when corpus and accumulated income were to be distributed to the beneficiaries; a trust company was the trustee; the trusts became special partners in a partnership in which the settlor was a general partner and made capital contributions of the corpus paid in by the settlor; both trusts were irrevocable.

Held, that the settlor did not have sufficient control over the trusts to make the income taxable to him. *Helvering vs. Clifford*, 309 U. S. 331, distinguished.

Held, further, that the trusts were bona fide partners in the partnership and their distributive shares of partnership income are not income of the petitioners.

Milton Cades, Esq., and Urban E. Wild, Esq., for the petitioners.

Charles W. Nyquist Esq., for the respondent.

The respondent determined deficiencies in income tax for the years and in the amounts as follows:

Year	Roy Eaton	Genevieve Eaton
1943	\$ 7,477.24	0.00
1944	23,589.24	0.00
1945	19,282.01	\$381.09
1946	449.81	449.81

The principal issue is whether the income reported by two successive trusts created by the petitioner Roy Eaton for his minor children is income of the petitioners. The larger part of the income reported by the trusts was reported as their distributive shares of income of a partnership of which the petitioner Roy Eaton was a member. They also reported income from investments. As to both kinds of income the question is whether the settlor of the trusts had sufficient control over them so as to make their income taxable to him. As to the partnership income, there is a further question as to whether the trusts were bona-fide partners in a partnership in which the petitioner Roy Eaton was a member.

Issues as to net operating losses incurred in the operation of a sampan and a capital gain on the sale thereof were settled by stipulation.

### Findings of Fact

At all times material hereto, the petitioners were husband and wife and were residents of the Territory of Hawaii or of the State of California. Their income tax returns were filed with the Collector of Internal Revenue for the District of Hawaii.

The petitioners have three children who in 1942

were respectively of the ages of 12, 10, and 8 years.

On March 18, 1940, the petitioner Roy Eaton, hereinafter called the petitioner, acquired franchises from Nehi Corporation to manufacture and sell three Nehi beverages\* in the Hawaiian Islands. All three franchises provided that they were of a personal nature, and contained restrictions against any assignment, and prohibitions against assignment to corporations.

The petitioner had not had any previous experience in the bottling business. He commenced the operation of a bottling plant in Hawaii on June 8, 1940. The business conducted under the Nehi franchises consisted of the purchase of concentrates from Nehi Corporation, from which syrups were made. The syrups with carbonated water were bottled and the bottles were cased and delivered to the retail trade for sale to the public. The business required substantial capital for the acquisition of a plant, bottling machinery, and delivery equipment.

The attack on Pearl Harbor on December 7, 1941, and the subsequent military activities caused the petitioner considerable concern as to whether he would be able to obtain supplies to carry on his bottling business, and also as to whether the business would be continued in the event that anything happened to him in view of the fact that the franchises were in his name. Military authorities in Hawaii considered the maintenance of adequate

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\*The beverages were known by the trade names of "Nehi," "Royal Crown," and "Par-T-Pak."



supplies of carbonated beverages to be necessary for troop morale purposes and assisted the petitioner in obtaining shipping space for supplies for his business.

The petitioner corresponded with Nehi Corporation in 1942 and asked for suggestions as to what might be done with his franchises in the event of his death to insure that the business might be continued for the benefit of his wife and children. He was particularly concerned about providing for his family as he had put into the business everything that he had. The replies that he received from Nehi Corporation contained some suggestions but they were not satisfactory to the petitioner. The petitioner then consulted an attorney as to possible methods of keeping the franchises and continuing the business as a protection for his family.

The method decided upon and carried out was to organize a special partnership to operate the business, with a trust as a special partner. On September 30, 1942, a special partnership was organized in which the petitioner, Charles P. Johnson, and Walter L. Prock, Jr., were the general partners, and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton was the special partner. Johnson and Prock were acquaintances of the petitioner, and Johnson had been office manager of the petitioner's business. Both were in the military service at that time, but stationed in Hawaii. The petitioner was aware that Nehi franchises had been issued in the names of several individuals in other instances, and he felt that

having his franchises in the names of three persons would be some assurance of the continuance of the business in the event of his death. Neither Johnson nor Prock had had any experience in general business management, and the petitioner felt that it was desirable to have an associate in the business who had had such experience. The Bishop Trust Company, Limited, as a fiduciary, was experienced in the management of businesses, and that fact prompted the petitioner to admit it, as trustee, to the partnership as a special partner. The partnership was known as Nehi Beverage Company of Hawaii. It complied with all required legal formalities, such as filing for record and publication.

On the same date, September 30, 1942, the petitioner created a trust, herein called Trust No. 1, by executing a deed of trust naming Bishop Trust Company, Limited, as trustee. The petitioner paid over to the trust the sum of \$15,000, which the trustee was required by the terms of the trust deed to contribute, as special partner, to the capital of the partnership for a 30 per cent interest therein. The trust was to endure until the youngest of the petitioner's children attained the age of 25 years, or until the prior death of the last survivor of the children. Upon termination, the corpus and accumulated income were to be paid over to the surviving children and the children of any deceased children and, if none, then to the persons other than the petitioner who would be the heirs-at-law of the last survivor of the children. In the event the partnership, Nehi Beverage Company, terminated dur-

ing the continuance of the trust, the trustee could terminate the trust and distribute to the beneficiaries.

During the continuance of the trust, the trustee was required to accumulate the income, but it was given discretion to use a part of the income for the maintenance, support, and education of the beneficiaries, and if income was not sufficient it could use corpus for that purpose. The petitioner reserved the right to convey additional property to the trustee. If any beneficiary was a minor when it became entitled to any distribution, the trustee could make payment to the parents or guardian of the minor.

The trustee was given the usual trust powers of management, sale, investment and reinvestment, with a provision that during the lifetime of the petitioner the trustee should obtain his consent to the making of investments and upon his death the trustee was to be restricted to investments that trustees are permitted by law to make. There was a further provision that the trustee might make advances or loans to, or further investments in the partnership Nehi Beverage Company of Hawaii "without liability for any losses resulting therefrom."

The trust, by its terms, was "irrevocable by the Settlor," and the settlor reserved the right to amend only by adding other property to the trust. It was further provided that in no event should any of the trust property or income be paid to or inure to the benefit of the petitioner.

The trustee was authorized to rely on the auditor's reports as to the business of the partnership, Nehi Beverage Company of Hawaii, and was not required to make any independent investigation into its affairs or accounts. The trustee was not accountable for any loss resulting from any act consented to by the petitioner or for any loss resulting from any investment in or loan or advance to Nehi Beverage Company of Hawaii.

The purpose of the special partnership was to acquire the assets and carry on the bottling business theretofore carried on by the petitioner. The capital provided for and the interests of the partners were as follows:

	Amount	Interest
Roy Eaton .....	\$30,000	60%
Charles P. Johnson .....	2,500	5%
Walter L. Prock, Jr. ....	2,500	5%
Bishop Trust Company, Limited	15,000	30%
	<hr/>	<hr/>
Totals .....	\$50,000	100%

The special partner was not to be liable for the debts of the partnership beyond the extent set forth in a specified section of the Revised Laws of Hawaii.

The agreement provided that the general partners who were active in the business should receive as compensation for their services a salary chargeable as an expense in computing partnership profits in such amount as should be determined by the general partner or partners. The remaining net profits

and the losses were to be shared by all of the partners in accordance with the capital contribution of each, but with a limitation on the shares of profits of Johnson and Prock while they were not devoting full time to the business. Profits could be withdrawn at such times as the general partners determined. Only general partners had authority to transact the business of the partnership and incur obligations. The special partner could investigate the partnership affairs and advise the general partners as to its management. The determination by the general partner or partners owning the majority in interest of the capital contributed by the general partners was to be binding upon and establish the policy of the partnership.

Books were to be audited periodically, and a general account of partnership affairs was to be taken annually.

The partnership was to continue for 10 years and thereafter from year to year until terminated by any general partner giving six months' notice of intention to terminate. It could be terminated at any time on two months' written notice by a majority in interest of the general partners.

By bill of sale made as of the close of business on September 30, 1942, the petitioner conveyed to the partnership the assets used in his bottling business, and the partnership assumed his liabilities in connection therewith. The assets were listed at \$106,960.55, and the liabilities at \$76,960.55, leaving a net worth of \$30,000.

Under date of October 6, 1942, Nehi Corporation

issued beverage franchises in the names of the three individuals who were the general partners.

Upon formation of the partnership, the petitioner drew from it a salary of \$1,250 a month, which was later increased to \$1,750.

Early in 1943, the petitioner Roy Eaton was advised by his attorney that under a recent court decision\* he might be subject to income tax upon the trust's share of the partnership profits, without it being possible for him to get any of that income to use to pay the tax. The petitioner would not have been able to pay the tax from his own resources.

In order to meet the situation created by the court decision, the petitioner, on February 28, 1943, created a new trust, herein sometimes called Trust No. 2, with Bishop Trust Company, Limited, as trustee, with his children as beneficiaries. This trust was essentially the same as Trust No. 1, except that it did not contain any provisions for the use of either income or corpus for the education, support, or maintenance of the children during the existence of the trust. The trustee was to accumulate all income during the existence of the trust.

The petitioner contributed \$15,000 to Trust No. 2, which sum was used by it to purchase from Trust No. 1 all of its right, title and interest in and to its 30 per cent capital interest in the special partnership. Formal instruments were executed assigning the partnership interest and amending the

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\**Helvering v. Stuart*, 317 U. S. 154.

agreement of special partnership to show the new trust as being a partner.

On the same day, February 28, 1943, Trust No. 1 loaned the sum of \$15,000 to the partnership and received from the partnership its note due one year after demand, with interest at 5 per cent per annum. Interest was paid periodically and the note was paid in full on November 23, 1946.

The trustee consented to the creation of Trust No. 2 and the sale of the property of Trust No. 1 to Trust No. 2 because there was no change in the identities of the persons in interest, and because it then appeared that there would be some advantage tax-wise.

During the existence of the special partnership, the petitioner Roy Eaton regularly discussed the policies and finances of the business with officers of the trustee. In the early years of the partnership, it was faced with a rapid expansion of its business and it had inadequate capital. The expansion of the business was largely due to the increase in military personnel in Hawaii during World War II. Under the Nehi franchises, it was necessary that customers be given adequate service. This necessitated that the partnership's facilities and equipment be enlarged, and required additional working capital. In order to provide additional capital, the partners and trust company officers agreed that until the partnership capital should exceed \$100,000 no partner should withdraw any profits or capital except to pay taxes, commissions, fees and expenses of the special partner and taxes on the partnership profits of the general partners.

When partners Johnson and Prock were released

from military service they became active in the partnership business. In 1946, the partnership business was falling off and they decided to sell their interests. An audit was made to determine the values of their interests and the petitioner Roy Eaton purchased their interests at those values on June 30, 1946. The amounts that Johnson and Prock received did not include any sums for their interests in the franchises. Thereafter, an appropriate certificate of change of special partnership was filed in the proper public office and a notice was duly published.

The partnership, Nehi Beverage Company of Hawaii sold all of its assets and property to Nehi Beverage Company of Hawaii, Limited, as of the opening of business on October 1, 1946. The capital and drawing accounts of the special partner at the time of sale were, respectively, \$30,000 and \$19,000. The capital and drawing accounts of the general partner were, respectively, \$70,000 and \$6,512.71. The purchaser was a corporation in which the petitioner had no interest.

Notes were given by the purchaser in the aggregate amount of \$165,000 for part of the purchase price, of which notes in the principal amount of \$115,500 were payable to the petitioner Roy Eaton, and notes in the principal amount of \$49,500 were payable to the Bishop Trust Company, trustee of Trust No. 2.

Appropriate steps were thereafter taken to dissolve the special partnership and cancel its certificate.



The distributive share of partnership income of Trust No. 1 for the period ended February 28, 1943, was \$10,049.17. In succeeding years its income consisted of interest and dividends from investments. At September 30, 1950, the assets of Trust No. 1 consisted of cash in the amount of \$377.61, and stocks, bonds and savings and loan certificates with a cost of \$24,919.10, a total of \$25,296.71.

The distributive share of partnership income of Trust No. 2 for years ended June 30, was as follows:

1944 .....	\$ 7,722.93
1945 .....	22,059.40
1946 .....	23,076.92
1947 .....	5,182.80

Trust No. 2 realized a profit on the sale of partnership assets. In succeeding years its income consisted of interest and dividends from investments. At February 28, 1951, the assets of Trust No. 2 consisted of cash in the amount of \$3,604.22 and stocks, bonds and savings and loan certificates with a cost of \$92,336.92, a total of \$95,941.14.

Trusts Nos. 1 and 2 duly filed Federal fiduciary income tax returns each year and paid the tax shown to be due thereon.

None of the funds of Trusts Nos. 1 and 2 was ever paid out to the beneficiaries thereof. During the period of the existence of the special partnership, the petitioner Roy Eaton supported his children from his own income.

The petitioner Roy Eaton, Charles P. Johnson, Walter L. Prock, Jr., and Trusts Nos. 1 and 2 really and truly intended to and did join together for the purpose of carrying on a business and sharing its profits and losses.

Trusts Nos. 1 and 2 were bona fide trusts for the benefit of the children of the petitioners, and the petitioners had no substantial control over, or interest in, the corpus or income thereof.

### Opinion

Arundell, Judge: The issue for decision here is the same as that in the cases of Edward D. Sultan, et al., 18 T. C. . . . , and Thomas H. Brodhead, et al., 18 T. C. . . . . That issue is whether income reported by trusts created by the petitioner Roy Eaton is income of Eaton and his wife either under the rationale of *Helvering vs. Clifford*, 309 U. S. 331, or on the ground that the trusts were not bona fide partners of Roy Eaton in the operation of a business.

The basic facts in these cases are essentially the same as those in the Sultan and Brodhead cases, *supra*. They require the same decision, namely, that the income reported by the trusts was their income, and that the respondent erred in treating such income as income of the petitioners.

Decisions will be entered under Rule 50.

Entered July 9, 1952.

Served July 9, 1952.

Received June 27, 1952. T.C.U.S.

The Tax Court of the United States, Washington  
Docket No. 24081

ROY EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### DECISION

Pursuant to the Memorandum Findings of Fact and Opinion of the Court entered July 9, 1952, the respondent herein, on October 9, 1952, filed a recomputation for entry of decision, and the petitioner herein, on October 30, 1952, filed an acquiescence in the respondent's recomputation. Wherefore, it is

Ordered and Decided: That there is a deficiency in income and victory tax for the taxable year 1943 in the amount of \$4.93, and that there are no deficiencies in income tax for the taxable years 1944, 1945, and 1946.

/s/ C. R. ARUNDELL,  
Judge.

Entered: Oct. 31, 1952.

Served: Nov. 3, 1952.

The Tax Court of the United States, Washington  
Docket No. 24082

GENEVIEVE H. EATON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### DECISION

Pursuant to the Memorandum Findings of Fact and Opinion of the Court entered July 9, 1952, the respondent herein, on October 9, 1952, filed a recomputation for entry of decision, and the petitioner herein, on October 30, 1952, filed an acquiescence in the respondent's recomputation. Wherefore, it is

Ordered and Decided: That there are no deficiencies or overpayments due in income tax for the taxable years 1945 and 1946.

/s/ C. R. ARUNDELL,  
Judge.

Entered: Oct. 31, 1952.

Served: Nov. 3, 1952.

In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 24081

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

ROY EATON,

Respondent on Review.

### PETITION FOR REVIEW

To the Honorable Judges of the United States Court  
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States in this proceeding on October 31, 1952, "That there is a deficiency in income and victory tax for the taxable year 1943 in the amount of \$4.93, and that there are no deficiencies in income tax for the taxable years 1944, 1945, and 1946." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Roy Eaton, is an individual, whose mailing address is Route No. 1, Box 303, Fullerton, California, and who was, during the taxable years herein involved, a resident of the Territory of Hawaii or Fullerton, California. The said taxpayer filed his Federal income tax returns for the calendar years 1943, 1944, 1945 and 1946,

the taxable years here involved, with the Collector of Internal Revenue for the District of Hawaii.

### Nature of Controversy

The sole question which was presented to and passed upon by The Tax Court of the United States is whether the income of a partnership in which the settlor-taxpayer was a general partner, and a trust created for the benefit of the taxpayer's three minor children was designated as a special partner, was taxable to the taxpayer, insofar as the share thereof allocable to the trust was concerned, under the doctrine of *Helvering v. Clifford* (1940), 309 U. S. 331.

In 1940 the taxpayer acquired franchises from Nehi Corporation to manufacture and sell Nehi beverages in the Hawaiian Islands. On September 30, 1942, a special was organized in which the taxpayer, Charles P. Johnson, and Walter L. Prock, Jr., were the general partners, and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, was the special partner. On the same date, September 30, 1942, the taxpayer executed a deed of trust for the benefit of his minor children, naming the Bishop Trust Company, Limited, as trustee, to which trust he paid the sum of \$15,000 which it was required be contributed to the capital of the partnership for a 30 per cent interest therein. The taxpayer then conveyed to the partnership the assets used in his bottling business and the partnership assumed his liabilities in connection therewith. Beverage franchises were issued by the Nehi Cor-

poration on October 6, 1942, to the three general partners.

On February 28, 1943, a new trust was created by the taxpayer, for the benefit of his children, with the Bishop Trust Company, Limited, designated as trustee. All of the trust income was to be accumulated during the existence of the trust. The new trust became a special partner in the partnership.

In his notice of deficiency, the Commissioner held that the income of the Nehi Beverage Company of Hawaii which had been reported on fiduciary returns filed by the Roy Eaton Trust No. 2, as well as the income of the Roy Eaton Trust No. 1, was taxable to the taxpayer, Roy Eaton. The Tax Court of the United States disagreed with the Commissioner's determination and held that the settlor did not have sufficient control over the trusts to make the income thereof taxable to him, that the trusts were bona fide partners in the partnership and that their distributive shares of partnership income did not constitute income of the taxpayer.

/s/ CHARLES S. LYON,

Assistant Attorney General.

/s/ CHARLES W. DAVIS,

Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and filed January 19, 1953, T.C.U.S.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 24082

### PETITION FOR REVIEW

To the Honorable Judges of the United States Court  
of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States in this proceeding on October 31, 1952, "That there are no deficiencies or overpayments due in income tax for the taxable years 1945 and 1946." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Genevieve H. Eaton, is an individual, whose mailing address is Route No. 1, Box 303, Fullerton, California, and who was, during the taxable years here involved, a resident of the Territory of Hawaii or Fullerton, California. The said taxpayer filed her Federal income tax returns for the calendar years 1945 and 1946, the taxable years here involved, with the Collector of Internal Revenue for the District of Hawaii.

### Nature of Controversy

The sole question which was presented to and passed upon by The Tax Court of the United States is whether the income of a partnership in which the taxpayer's husband, Roy Eaton, was a general partner, and a trust created by him for the benefit



of the taxpayers' three minor children was designated as a special partner, was taxable to the taxpayer and her husband, on a community property basis, insofar as the share thereof allocable to the trust was concerned, under the doctrine of *Helvering v. Clifford* (1940), 309 U. S. 331.

In 1940 the taxpayer's husband, Roy Eaton, acquired franchises from Nehi Corporation to manufacture and sell Nehi beverages in the Hawaiian Islands. On September 30, 1942, a special partnership was organized in which Roy Eaton, Charles P. Johnson, and Walter L. Prock, Jr., were the general partners, and Bishop Trust Company, Limited, Trustee under Deed of Trust of Roy Eaton, was the special partner. On the same date, September 30, 1942, the taxpayer's husband executed a deed of trust for the benefit of their minor children, naming the Bishop Trust Company, Limited, as trustee, to which trust he paid the sum of \$15,000 which it was required be contributed to the capital of the partnership for a 30 per cent interest therein. The taxpayer's husband then conveyed to the partnership the assets used in his bottling business and the partnership assumed his liabilities in connection therewith. Beverage franchises were issued by the Nehi Corporation on October 6, 1942, to the three general partners.

On February 28, 1943, a new trust was created by the taxpayer's husband, for the benefit of their children, with the Bishop Trust Company, Limited, designated as trustee. All of the trust income was to be accumulated during the existence of the trust.

The new trust became a special partner in the partnership.

In his notice of deficiency, the Commissioner held that the income of the Nehi Beverage Company of Hawaii which had been reported on fiduciary returns filed by the Roy Eaton Trust No. 2, as well as the income of the Roy Eaton Trust No. 1, was taxable to the taxpayer's husband, Roy Eaton, one-half of which income was included in the taxpayer's taxable income as her community share thereof. The Tax Court of the United States disagreed with the Commissioner's determination and held that the settlor did not have sufficient control over the trusts to make the income thereof taxable to him, that the trusts were bona fide partners in the partnership and that their distributive shares of partnership income did not constitute income of the taxpayer's husband.

/s/ CHARLES S. LYON,

Assistant Attorney General;

/s/ CHARLES W. DAVIS,

Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and filed January 19, 1953, T.C.U.S.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 24081

### STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by his attorneys, H. Brian Holland, Assistant Attorney General, and Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision, "That there is a deficiency in income and victory tax for the taxable year 1943 in the amount of \$4.93, and that there are no deficiencies in income tax for the taxable years 1944, 1945 and 1946."

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner.

3. In holding and deciding that the trusts created by the taxpayer for the benefit of his minor children were bona fide partners in the partnership involved and that their distributive shares of partnership profits were not income of the taxpayer herein.

4. In failing and refusing to hold and decide that the trusts created by the taxpayer for the benefit of his minor children were not, for Federal income tax purposes, recognizable partners in the taxpayer's business known as Nehi Beverage Company of Hawaii.

5. In holding and deciding that the settlor-taxpayer did not have any rights in the trust corpora or income sufficient to make the income of the trusts taxable to him.

6. In failing and refusing to hold and decide that, under the doctrine of *Helvering v. Clifford*, 309 U. S. 331, the income of the trusts created by the settlor-taxpayer for the alleged benefit of his minor children was taxable to him.

7. In that its ultimate conclusion that the trusts created for the taxpayer's minor children were bona fide trusts created for the benefit of the said children and that the taxpayer did not have any substantial control over, or interest in, the corpora or the income of the trusts is not supported by but is contrary to its underlying findings of fact.

8. In that its opinion and its decision are not supported by but are contrary to the Court's findings of fact.

9. In that its opinion and its decision are not supported by but are contrary to the evidence.

10. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ H. BRIAN HOLLAND,

Assistant Attorney General;

/s/ CHARLES W. DAVIS,

Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

## Statement of Service:

A copy of this Statement of Points was mailed to Milton Cades, Esquire, 400 Bishop Trust Building, Honolulu, T. H., attorney for respondent on review, on April 2, 1953.

/s/ CHAS. E. LOWREY,  
Special Attorney, Bureau of  
Internal Revenue.

Filed April 2, 1953, T.C.U.S.

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[Title of Court of Appeals and Cause.]

T. C. Docket No. 24082

## STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by his attorneys, H. Brian Holland Assistant Attorney General, and Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision, "That there are no deficiencies or overpayments due in income tax for the taxable years 1945 and 1946."

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner.

3. In holding and deciding that the trusts created

by the taxpayer's husband, Roy Eaton, for the benefit of their minor children were bona fide partners in the partnership involved and that their distributive shares of partnership profits were not income of the taxpayers herein.

4. In failing and refusing to hold and decide that the trusts created by the taxpayer's husband, Roy Eaton, for the benefit of their minor children were not, for Federal income tax purposes, recognizable partners in his business known as Nehi Beverage Company of Hawaii.

5. In holding and deciding that the taxpayer's husband, Roy Eaton, did not have any rights in the corpora or income of the trusts created by him for the benefit of their minor children sufficient to make the income of the trusts taxable to him.

6. In failing and refusing to hold and decide that, under the doctrine of *Helvering v. Clifford*, 309 U. S. 331, the income of the trusts created by the taxpayer's husband, Roy Eaton, for the alleged benefit of their minor children was taxable to him and that the taxpayer was taxable on her community share of such income.

7. In that its ultimate conclusion that the trusts created by the taxpayer's husband, Roy Eaton, for their minor children were bona fide trusts created for the benefit of the said children and that he did not have any substantial control over, or interest in, the corpora or the income of the trusts is not supported by but is contrary to its underlying findings of fact.

8. In that its opinion and its decision are not supported by but are contrary to the Court's findings of fact.

/s/ CHAS. E. LOWREY,

Special Attorney, Bureau of

9. In that its opinion and its decision are not supported by but are contrary to the evidence.

10. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ H. BRIAN HOLLAND,

Assistant Attorney General;

/s/ CHARLES W. DAVIS,

Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of Service:

A copy of this Statement of Points was mailed to Milton Cades, Esquire, 400 Bishop Trust Building, Honolulu, T. H., attorney for respondent on review, on April 2, 1953.

Internal Revenue.

Filed April 2, 1953, T.C.U.S.

[Title Tax Court and Cause.]

Docket Nos. 24081 and 24082

CERTIFICATE OF CLERK

I, Ralph A. Starnes, Chief Deputy Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents 1 to 43, inclusive, constitute and are all of the original papers and pro-

ceedings (including Original Exhibits 1 through 51, with the exception of # 30, not used, attached to the Stipulation of Facts; Petitioner's Exhibits 52 through 57, admitted in Evidence) on file in my office as the original and complete record in the proceedings before The Tax Court of the United States in the above-entitled proceedings and in which the Respondent in The Tax Court proceedings has initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 10th day of April, 1953.

[Seal]      /s/ RALPH A. STARNES,  
Chief Deputy Clerk, The Tax  
Court of the United States.

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No. 13806. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Roy Eaton, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Genevieve H. Eaton, Respondent. Transcript of the Record. Petitions to Review a Decision of The Tax Court of the United States.

Filed April 13, 1953.

                  /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 13,806

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

ROY EATON and GENEVIEVE H. EATON,  
Respondents.

### PETITIONER'S DESIGNATION OF RECORD

The petitioner hereby designates for inclusion in the printed record on appeal the following portions of the typewritten record received by this Court from the Clerk of The Tax Court of the United States in the above-entitled cause:

1. Docket Entries, No. 24,081.
2. Docket Entries, No. 24,082.
3. Petition (with exhibit), No. 24,081.
4. Answer, No. 24,081.
5. Petition (with exhibit), No. 24,082.
6. Answer, No. 24,082.
7. Stipulation of Facts, with Exhibits 1 through 22, 29, and 31 through 36.
8. Transcript of Proceedings, 6-18-51, pp. 1, 24 through 102.
9. Findings of Fact and Opinion.
10. Decision, No. 24,081.
11. Decision, No. 24,082.
12. Petition for Review. No. 24,081.

13. Petition for Review, No. 24082.
14. Statement of Points, No. 24,081.
15. Statement of Points, No. 24,082.
16. This Designation.

Dated: April 28, 1953.

/s/ H. BRIAN HOLLAND,  
Assistant Attorney General,  
Attorney for Petitioner.

[Endorsed]: Docketed and Filed April 30, 1953.